

AN
ABSTRACT
OF
An ESSAY
TOWARDS THE
ELEMENTS
OF
UNIVERSAL LAW.

P R O P O S A L S F O R

Printing this *ESSAY* by SUBSCRIPTION.

THE whole Work is, already, so far performed, that this entire Plan of it was drawn up, from the Author's own Papers, without the least Assistance from any other Book, or Books whatever; so that many Parts of it want little more than the last Transcribing and Polishing for the Press.

To which it will be sent, Book by Book, with all convenient Speed, till the whole Five are printed off: The first of which will be begun, as soon as the Author can judge, by his Subscriptions, what Number the Impression ought to consist of.

THIS Way of publishing them is chosen, because it will, not only, take off from that Delay, which necessarily attends the Delivery of large Books, all at once, to the Subscribers; but will, also, be a great Ease, both to the Author and the Press, in the Execution of it.

NOR will it be delivering Fragments, as has been lately practised; for, tho' the five Books form together one Body of the Elements of Law, in all its Parts; yet, each Book is, separately, an intire Treatise on its particular Subjects; as will be obvious from the Plan itself.

THE Inequality of the Manuscript-Hand, and the Alterations it may undergo, in transcribing for the Press, make it difficult to say, exactly, what will be the Bulk of the whole: But it cannot be less than *eight Hundred*, or a *Thousand* Pages, in *Quarto*; and will, most probably, amount to *more*.

THE Conditions, to *Subscribers*, are, *one Guinea* down, on the Delivery of this *Abstract*, with a *Receipt*; and *another Guinea*, on the Delivery of the *two last Books*.

N. B. *An Indisposition which seized the Author, while these Sheets were in the Press, has occasion'd some Inaccuracies; particularly in the Pointing; which, though designed to be full, is, in some Places, too open; and, in others, not without positive Faults; which, 'tis hoped, the Judicious will excuse.*

An Abstract

OF

An ESSAY

Towards DEDUCING the

ELEMENTS

OF

UNIVERSAL LAW,

FROM

The First Principles of Knowledge,

AND

The NATURE of THINGS:

IN A

METHODICAL and CONNECTED SERIES.

In FIVE BOOKS.

I. Of Law IN GENERAL.

II. Of PRIVATE Law.

III. Of CRIMINAL Law.

IV. Of the Laws of MAGISTRACY.

V. Of the LAW of NATIONS.

By FETTIPLACE BELLERS, Esq;

— M. *Constituendi vero Juris, ab illâ summâ Lege, capiamus Exordium; quæ Seculis omnibus ante nata est, quàm Scripta Lex ulla, aut quàm omnino Civitas constituta.*

CICERO de Legibus, Dial. I.

— A. *Non ergo à Prætoris Ediçto, ut plerique nunc, neque à Duodecim Tabulis, ut Superiores, sed penitus ex intimâ Philosophiâ, hauriendam Juris disciplinam putas.*

Ibid.

L O N D O N, Printed in the YEAR M DCC XL.

To be given to SUBSCRIBERS.

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An Address

Delivered at

Town's Debating

Club

on

the Principles of Knowledge



T H E PREFACE to the PLAN.

THOUGH both *Plato*, among the *Greeks*, and *Cicero*, among the *Romans*, not to mention others, had long before made some very just Attempts towards shewing the Rise of Laws from the Reason and Nature of Things; yet, that accurate Surveyor of the Advances and Extent of Human Knowledge, our own Lord *Bacon*, truly observes^a, that those who had, 'till his Time, treated of Laws, doing it either as Philosophers, had not carried their fine Contemplations near enough to Use and Practice; or as Lawyers only, had not sufficiently freed themselves from the Fetters of positive Institutions.

AND notwithstanding divers Works of great Weight and Learning have since appeared, such as those of *Grotius*, *Selden*, *Cumberland*, *Puffendorf*, and *Domat*; yet they have, each of them, their own particular Points so much in View, that the same Observation remains, in great Measure, true to this Day.

To supply which Defect, as far as the Author's Abilities will permit, his Design is, according to his Title, to deduce the Elements of an entire Body of Laws from the highest Principles of Truth and Knowledge: Without dropping the Inquiry so short as to leave Practice wholly out of Sight; nor yet carrying it down to those minuter Reasonings and Circumstances which are necessary for the Bar, the Bench, or the Senate, in the actual Administration of Justice and Government, in any particular State.

THE Use of such an Undertaking, if it should be but tolerably well executed, is too obvious to need much Explanation.

SUCH Readers as have no Inclination to meddle with the Intricacies of actual Law, but would, however, be glad of a rational View of Human Society, in all its Parts, will here find it in a much more extensive Manner, than is to be seen in any *one* Writer; and in a more concise, as well as more connected one, than it can be found in, among *many*: As will, 'tis apprehended, be obvious even to Persons but slightly vers'd in these Subjects, if the PLAN of it, here offered, be considered with a little Attention.

THE beginning Student, before he plunges into the irregular Mazes of Positive Institution, may be previously, and at once, furnished, in due Order and Connection, with the Reasons on which an entire Body of Laws depend in general. A Clue, which is not a little necessary to all those, who are obliged to travel through such wide and intricate Labyrinths, as the Particular Laws of all long civilized Nations ever have, and always must swell to.

GENTLEMEN, whose Condition of Life and Fortunes call them early to a Share in the Legislature of their Country, to whom a just System of such general Truths is more

^a *Advancement of Learning*, Book VIII. chap. 3.

necessary than the Subtleties of Practice, may be thereby prepared to judge, much more readily, concerning those various and opposite Reasonings, which are usually offered in such Debates, as attend the Carrying all Particular Laws, from Theory, into Institution and Act.

AND though the great Masters of Jurisprudence should, therein, meet with no *new* Truths, yet 'tis possible that the Manner in which the Author deduces the *old* ones from their first Principles, and the Order in which he disposes them when so deduced, may not be unpleasing. For he flatters himself, they will make some Allowance for an Undertaking, which is, in great Measure, the first of the Kind; especially if they consider how difficult it is, to make one and the same Performance useful to such, as the Writer may be capable of instructing; and, at the same Time, not disagreeable to those, who are able to instruct him.

BESIDES which merely Civil Purposes, as the first Book, on which the rest are built, shews how evidently the Doctrines of *Natural Religion*, *Private Morality*, and *Public Law*, are derived from the same Sources, and tend directly to the same great Purposes; that Part of it in particular, may not be useless: especially at a Time when divers Sorts of Enthusiasm seem to make some such Considerations necessary.

THOUGH 'tis possible some of his Readers may look on such Discourses, as Part of the first Book will consist of, as Things too remote for an Introduction to the Elements of Law. But, besides observing that those will be very short, he who aims at offering an entire Body of Doctrine to the Public, ought to consider himself as speaking to the most inquisitive and extensive Capacities, who will not be fully satisfied with any Thing less than the highest Reasonings, which the Subject they are considering seems to admit of.

OR, if Precedent be necessary in the Case, he is therein justified by the Manner in which, that great Lawyer, *Cicero* himself enters on the Consideration of this Subject. Though, if the Reader should compare the two Discourses, 'tis hoped he will find that the accumulated Thought of so many Ages has enabled the Author, to carry those Views something farther than that learned *Roman* had an Opportunity of doing; or than some others, since his Time, have done.

CARE is taken to render the Style plain and concise, without aiming at Ornament. Language, when applied to these graver Purposes, seeming to be most properly dressed in that simple Neatness, which becomes a prudent Matron, when she is employed in domestic Affairs at Home.

MANY Terms of Art are thrown into Circumlocutions; that is, partly into their Definitions; lest the technical Meaning they have acquired, in the particular Laws to which they belong, should not be, precisely, that in which they must be used, in such a general Discourse as the present.

IN which, however, 'twas hardly possible to avoid some little Novelty of Expression; though that will no where be introduced without sufficient Explanation. Of which Sort are, *the Laws of Private Civil Dominion and Subjection*; for what the Civilians call *Private Law*, and which, according to *English* Phraseology, we may call the *Laws of Private Liberty, Power, and Property*: The *Laws of Public Subjection*; for what they call *Criminal Law*, and we *Pleas of the Crown*: The *Laws of Feclal Magistracy*; for a Part of Public Law, for which neither our own, nor the *Roman* Writers furnish us with any distinct Term; for I need not observe, that *Jus Feclale* is, with them, what we call, *the Law of Nations* itself; and not that
Part

Part of their Civil Laws which vested the Officers who made Leagues, &c. with the Office and Power of so doing.

AND though these, and divers others, may at first View seem a little unusual; yet it is hoped, that, on a second Reading, they will appear to arise naturally, and without any Affectation, from the Cast and Turn of the whole Discourse; and to be, therefore, the properest Expressions in the several Places where they are used.

THOUGH, not only with respect to Language, but to more material Points, one great Use of publishing so large a View of the Undertaking, as the present, was to have the Opportunity of giving the Work itself, before it goes to the Press, such Improvements as might be suggested by the Judicious, to which the Writer will lend a ready Attention: For, how bold soever the Attempt may seem, he is far from thinking himself too knowing to be informed, or his Performance too perfect to be corrected.

ITS Margins will not be loaden with Quotations, which, in a Discourse that professedly appeals to the Nature of Things for its Authority, would be foreign to the Purpose; except here and there, perhaps, to free a seemingly uncommon Sentiment, from the Imputation of being altogether a Novelty.

NOR, in the opposite Extreme, will he run into formal Disputes; except on some very remarkable Occasions. His Business is not to pull down, but to build up, a System of Truths, on these Subjects, in as concise a Manner as their Extent and his Abilities will permit; without going out of his Way to combat celebrated Names, or received Opinions.

FOR otherwise, what between Quotation and Refutation, each Part of this Discourse might be readily swelled beyond that Bulk which is designed for the Whole; and that with much greater Ease to the Performer. Where he might also observe, that it will be more for the Student's Advantage to find the Author's Reading and Judgment, if he has any, in the Texture of that Whole, than in such splended Patches, which might cover, but would not cure, Flaws in the main Substance itself.

BUT to make ample Amends for those Omissions, if they are to be thought such in a Body of Elements only, References will be made, in every Part, to such Books, or Parts of Books, as are celebrated for handling those Subjects more at large; so as to make the whole a methodical Index to such Writers thereon as have fallen under the Author's View: By which the Reader may, at his Pleasure, readily fall into a larger Thread of Reasoning, on its several Heads, than by the Nature and Design of the Work itself, is, at first, intended to be laid before him: The principal Purpose of it being, to make him, in some Degree, Master of the great Out-lines, before he meddles with those minuter Particulars of Law, and Government: as the most certain Method of becoming afterwards a just Master of those also.

FOR the rest, the following View of the Whole will be his best Expositor; with Respect to which, in particular, he begs the Reader's Patience while he observes, that the Little Introductions that stand therein at the Head of each Book, and of the Parts into which those Books are divided, are not to be considered as the Discourses which will appear in those Places of the Work itself, but as little Abstracts of them, occasionally drawn up, for the better connecting the Parts of this View.

IT is also to be observed, that the several Sections under those Parts have, in the Book itself, their particular Introductions, and are also farther subdivided, according as they are more or less full of Matter; which, those who are already well acquainted with Laws will easily see, is very various.

THOSE

THOSE lesser Introductions and Subdivisions are, however, here omitted, because inserting them would have rendered the View too unequal and bulky, for one of its principal Purposes; which, without incumbering them with too minute a Detail of Particulars, was to give the Learned in these Subjects an Opportunity of judging, whether the Author's Plan might be capable of bearing, with sufficient Order and Clearness, that extensive Weight of Reasoning which he has attempted to lay on it; to which if it should appear not unequal in general, there would be the less Reason to suspect his Performance in particular Parts, wherein it must be easier to succeed: Or though he should fail in some of them, as 'tis not to be expected but he may, yet such a Work might not want its Merit upon the Whole.

FAULTLESS Performances, even on the slightest Subjects, are not very common; much less is it to be expected, that one Man's Life and Understanding should reach Perfection on Subjects, whose Extent and Difficulty have employed the ablest Heads of so many Ages, and so many Nations.

HOWEVER, as he has really applied a great Part of Twenty Years, to such Studies and Collections as might enable him to finish it, with some Benefit to his Readers, and some Reputation to himself, he doubts not but they will excuse him, if he flatters himself, that neither of his Aims will be wholly frustrated, in its Publication.

WORKS of this Kind often fall to the Share of the more speculative and indolent Tempers; because greater Capacity and Application always have called, and always will call, those of more Ability farther into the Scenes of active Life, than leaves them Leisure to undertake, what they had been, otherwise, the most capable of performing; and of which, therefore, when performed, they must be, in general, the ablest, if not the only, Judges.

AND as the World is, already, but too full of useless Books, the Author thinks it an advantageous Circumstance, both for his Readers at large, and himself, that his Cause must be tried before that highest Judicature: Where, as the Sentence is final, so 'tis sure not to be pronounced without due Consideration.



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B O O K I.

ELEMENTS of LAW

IN GENERAL;

OR, A

DISCOURSE

Of the ORIGIN, ENDS, and FITNESS of all
LAWS.

M. *Natura enim Juris nobis explicanda est, eaque ab Homini repetenda Natura.*

Cicero de Legibus, Dial. I.

M. *Dasne igitur hoc nobis, Pomponi, Deorum immortalium vi, ratione, potestate, mente, naturam omnem regi? Nam si hoc non probas, a Deo nobis causa ordiendae est potissimum.* Ibid.

A. *Dii immortales! quam tu longe Juris principia repetis! atqui ita, ut ego non modo ad illa non properem, quæ expectabam à te, de Jure Civili; sed facile patiar, te hunc diem vel totum in isto sermone consumere: sunt enim hæc majora, quæ aliorum causa, fortasse, complecteris; quam ipsa illa, quorum hæc causâ præparantur.* Ibid.

I N T R O D U C T I O N.

AS all Just Laws are Rules of Action, prescribed to intelligent Agents, by fit Persons, under fit Penalties, as fit Means, for obtaining some fit End; our Inquiry into their Reasons must begin, from an Examination of the Fitness of the *Ends* aimed at by them.

FOR though the Legislator may be fit to prescribe Rules of Action; though the Penalty may be fit to produce a Compliance with the Rule, and the Rule, when complied with, may be fit to produce the End; yet if that End itself be not fit to be obtained, the Law fails in its principal Point.

WHENCE

WHENCE it follows, that 'till the Ends at which Man should aim, in general, be known, we cannot judge of the Fitness of any particular Law that may be prescribed to him; for, notwithstanding the seeming Fitness of any particular End, it may, 'till Man's General End be known, be inconsistent therewith.

NOR can that general End be discovered, without a thorough Consideration of the Human Nature, in all the Circumstances of its Existence; as far as they are discoverable to us by Reason only.

FOR, as we are about to deduce the Fitness of Laws from the general Nature of Things, we are not to use other Mediums of Argument, than those which arise from that general Nature: And, in order to make our intended Discovery thereby, we will consider Man, the Causes of his Existence, his discoverable Ends, and the Laws of his Nature, under the following Heads, in the several subsequent

PARTS OF THIS BOOK.

- I. OF Mankind, and the visible System of Things, of which they are a Part, absolutely considered.
- II. OF the Being of some one first and universal Cause of all that System, as it follows from the Nature and Structure thereof.
- III. OF the Nature of that First Universal Cause, as it follows from the Nature of the Things produced.
- IV. OF the designed Ends of Man, as they follow from the Nature of that Cause, &c. in general.
- V. OF the Laws prescribed to Man, by that Cause, for obtaining those Ends; and their Fitness in general.
- VI. OF the physical Laws of the human Existence, and Nature; and their Fitness for those Ends.
- VII. OF the Moral Laws of the human Nature; and their Fitness in general.
- VIII. OF the Laws of Sole Morality; and their Fitness.
- IX. OF the Laws of Social Morality, or Human Society; and their Fitness in general.
- X. OF the Laws of Private Society; and their Fitness.
- XI. OF the Laws of Public, or Civil Society; and their Fitness in general.
- XII. OF the Laws of National Society; and their Fitness.
- XIII. OF the future Immortal Existence of Man, as it necessarily follows from all the preceding Thread of Reasoning; and as its Moral Nature and Laws are thereby, *in Part*, discoverable.

PART I.

Of MAN and the VISIBLE SYSTEM of Things of which he is a Part, *absolutely* considered.

THE preceding Titles, of the several Parts of this first Book, having acquainted the Reader with its wide Extent; he will not think it improper that, in this first Part of it, we bring him to a Point of View, whence, as from an Eminence, he may take a distant, general Survey of that vast Object, into whose Causes and Effects he is to enquire more minutely,

nutely, in the following Parts: Which however will be drawn into the Compass of very few Pages, under the following

SECTIONS.

- | | |
|--|--|
| <p>I. OF Human Understanding, not only as it is Part of our Subject, but especially, as it is the Instrument with which the whole Inquiry must be made.</p> <p>II. OF Human Knowledge, both Physical and Moral, as it is the Result of that Understanding, in general.</p> | <p>III. OF Mankind, with the rest of the Inhabitants, and Furniture of this Globe of Earth.</p> <p>IV. OF this Globe of Earth, and the rest of the Solar System, of which it is a Part.</p> <p>V. OF the rest of the visible Universe, of which that solar System is a Part.</p> |
|--|--|

PART II.

Of the *Being* of some ONE, *First*, and UNIVERSAL *Cause* of all Things.

THE preceding View having justly and necessarily put the Mind on an Inquiry into that Series of Causes and Effects, on which this prodigious System of Things is dependent, we come in this Part to trace, in a short manner, the great Out-lines of that Series, Step by Step, till they result in a full Proof of the Being of some one Universal Cause.

WHERE however the Reader is not to suppose, that in this Part, and the next immediately following, any thing so absurd is thought of, as swelling this Introduction to Elements of Law, with a whole System of Physicks: But stating the Cardinal Points of that System in such a concise, and in some degree, new Manner, as will conclude fully to our Purpose; referring the Reader to Places where those Particulars may be seen at large, which will be here treated in general Terms only, in the following

SECTIONS.

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|---|--|
| <p>I. OF the Generation, Birth, Growth, Life and Death of the various Inhabitants of this Earth, both vegetable and animal, as they depend on their several mechanick Structures, in particular, and the apparent Qualities of what we call Body or Matter, in general.</p> <p>II. OF the Structure, Motion, &c. of our Globe of Earth, as it depends on the Nature of Matter internally, and its Place in the solar System externally.</p> | <p>III. OF the Structure of that whole solar System, as it depends on certain universal Qualities internally, and on its Situation in, and being a Part of the visible Universe externally.</p> <p>IV. OF the Structure and Nature of the visible Universe, as it evidently infers both the being of infinitely more than its visible Parts, and the Existence of some one universal and infinite Cause.</p> |
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PART III.

Of the NATURE of the *first* and *universal* CAUSE.

THE Being of such a Cause thus prov'd, not from metaphysical Speculations, but Proofs of the clearest and strongest Kind that the human Mind is capable of, we come, in another Thread

Thread of Reasoning, to inquire into and prove the Nature of that Cause, as it follows, with equal Cogency, from various Mediums of Argument, in the following

S E C T I O N S.

- I. OF the infinite physical *Power* (if we may be allow'd that Expression) of the first universal Cause; as it follows from an evidently indefinite, if not actually infinite, physical Universe.
- II. OF the *intelligent* Nature of that Cause; as it follows from the mechanick Structure of that Universe.
- III. OF the *moral* Nature of that Cause, as it follows *a priori*, from his intelligent Nature; and *a posteriori*, from the moral Nature of the Things produced.
- IV. OF divers other particular Attributes of the first Cause, as they follow from, and depend, as to our Knowledge of them, on the former.
- V. OF the *Ends* for which such an infinite, moral Agent must act in general, as they follow
 1. *A priori*, from his demonstrated moral Nature.
 2. And are confirm'd by the moral Ends discoverable in his Works, in the subsequent discourses.

N. B. *Where we talk of any thing, as a necessary Consequence of the divine Nature, the Reader is not to understand a physical, but moral Necessity; as it arises from the voluntary, tho' infallible Rectitude of that Nature.*

P A R T IV.

Of the *Designed* ENDS of *Human Existence*.

The Ends of divine Action thus discovered, in general Terms; this Part is design'd for an Inquiry into the Ends of Man's Existence more particularly, which will be done in the following

S E C T I O N S.

- I. OF the metaphorical, or indistinct Manner in which divers Writers talk concerning the *Summum Bonum*; and the Manner in which this Inquiry must be made.
- II. OF the Ends of human Existence in general, as they follow
 1. From the beneficent and just Nature of the first Cause.
 2. From his Power and Wisdom, capable of executing all that his moral Nature dictates.
- III. OF the Ends of Man's present Life, as they follow
 1. From the System of Things of which
- he is a Part.
2. From the Powers and Faculties given him to obtain those Ends, in Conformity to that System.
- IV. OF the future, and necessarily immortal Existence of Man, or the human Mind; as it follows
 1. From the moral Nature and Power of the first Cause.
 2. And is confirmed by the Circumstances of our present Life, in the following Parts.
- V. OF the Means given to Man for obtaining those Ends, in general Terms.

PART V.

Of the LAWS prescribed to MANKIND, by the FIRST CAUSE.

HAVING, thus, trac'd Mankind up to their Origin, and, thence, discovered the Ends of their Existence, with a general Sketch of the Means given for obtaining those Ends, we now evidently see human Creatures, in the Light of Agents, acting under an infinitely powerful and wise Creator, to Purposes vastly superior to, and more extensive than, those narrow Views, which their Senses seem at first to suggest.

To which Deductions, however, tho' made, in a greater or less Degree, by the Body of Mankind in all Ages, many Objections have been started, by Names of some Note in the Philosophical World: chiefly drawn from the moral Nature of Things, as not answering to those Conclusions.

BUT a little farther Reflection will also shew us, that *Omnipotent Creator*, in the Light of a most perfectly beneficent, and just *Legislator*. In which we come, directly, to the principal Purpose of this first Book; that is, to examine the Fitness of all Laws, by the Fitness of the *Ends* to which they are directed.

WHERE, while we place all just human Laws, on the solidest Foundations on which they can stand, the Purposes of *Infinite Wisdom* and *Goodness*, we shall, at the same time, put the finishing Hand to demonstrating the Truths hitherto laid down; by shewing, that both the *physical*, and *moral* System of Things are perfectly right and fit, for the Purposes design'd; and therefore, necessarily, the Work of such a Cause, as we have before attributed them to.

AND here, as a Thread of Reasoning that is, in part, *new*, will be offered; so it will be done with that Modesty, which becomes a Man very sensible of the scanty Reach of human Knowledge, in *general*; and the yet narrower Compass of *his own*, in particular. Tho' not without a firm Persuasion, that Time will carry Discourses of this Kind to much greater Perfection, especially as to the minuter Circumstances, than can be here attempted, where we have Room for the Out-lines of those Reasonings only: which will be considered in general, in the subsequent

SECTIONS.

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| <p>I. OF the Nature and Idea of a <i>Law</i>, in general.</p> <p>II. OF the false, or imperfect Views of the <i>Laws of the human Nature</i>, given by divers Writers, in Discourses on, what they call, the <i>Laws of Nature</i>.</p> <p>III. OF those Circumstances of human Existence, and Knowledge, which point out to Man, his several Ends of Action, under various Penalties; and that they are, in the</p> | <p>properest Sense, the <i>Laws of his Nature</i>.</p> <p>IV. OF a <i>physical</i> Law, its Nature, Idea, and Fitness in general.</p> <p>V. OF a <i>moral</i> Law, its Nature, Idea, and Fitness, in general.</p> <p>VI. OF the Necessity for, and Fitness of, a proper <i>Mixture</i> of both these; for conducting Man to his design'd Ends, in general.</p> |
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PART VI.

Of the PHYSICAL *Laws* of the HUMAN NATURE, and their *Fitness*.

THE Laws under which Man acts, in general, thus considered, we come to a more particular Examination of the *Physical* Part of them; which, (tho' they are, to Mankind, in a Sort, unconditional and absolute) will, on a just Inquiry, be found to be so many moral Acts of the first Cause, for the fittest Purposes.

In the second Part of this Book, the admirable Structure of Things was considered, as they prov'd the exquisite Intelligence only, of the Architect: but here, viewed in another Manner, they will shew us, that *fine Artist*, in the Light of a most perfect *moral Agent*; in exact conformity to what was, antecedently, prov'd from his Intelligence alone: which will be the Business of the following

SECTIONS.

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| <p>I. Of the Fitness of the Structure of the human <i>Mind</i>, and <i>Understanding</i>, so far as it Exists and Acts by Laws wholly independent of human Will and Action; and of the Degrees of Necessity under which Man acts, in that respect.</p> <p>II. Of the Fitness of the established physical Laws of, what we call, <i>Body</i> or <i>Matter</i>, in general, for the moral Purposes to which they are design'd; and the Degrees of Necessity under which Man acts in those re-</p> | <p>spects, as well in the Structure of his <i>own Body</i>, as that of <i>other</i> Things.</p> <p>III. Of the moral Fitness of several of the most considerable physical Circumstances under which Man Exists and Acts; in the Points of his <i>Generation</i>, <i>Birth</i>, <i>Life</i>, <i>Health</i>, <i>Sickness</i>, and <i>Death</i>.</p> <p>IV. Of the Fitness of the physical Structure, of this <i>Globe</i> of Earth, of the <i>solar System</i>; and the <i>visible Universe</i>; for the moral Purposes to which they are evidently design'd.</p> |
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PART VII.

Of the MORAL *Laws* of the HUMAN NATURE, and their *Fitness*, in General.

THE Fitness of that *absolute* Government which is exercis'd over Man, by the physical Nature of Things, as they are in reality so many direct Laws, or Acts, of the first Cause, thus explain'd, we proceed to examine, those *moral* Rules of action, to which he is subjected, by the Mediation of his own Understanding, and Will.

WHERE 'tis to be observ'd, that as the former were the Instances of those Kinds, and Degrees of *Necessity* under which Men act; these are the Points in which they are, in various Ways and Degrees, *free Agents*, to the Purposes of their own Happiness; in Conformity to the absolute Nature of Things, or that of other free Agents: which we shall consider, in general, in the following

SECTIONS.

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| <p>I. Of the Instances, and Degrees, in which Mankind are subject to the Consequences of their own Actions, in general: which Consequences are inflicted, either immediately, by</p> | <p>the <i>physical</i> Nature of Things, or mediately, by the Intervention of <i>moral</i> Agents.</p> <p>II. Of that Degree of Liberty, and Power which the <i>physical</i> Nature of Things gives,</p> |
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or

or leaves to Man: in which Instances, those *physical* Laws become so many *moral* Rules of action to Mankind; under their various Penalties.

III. OF the Reasons for, and Fitness of, subjecting Mankind to the Consequences of their own Actions; in conformity to an

established Order of Things: without the Intervention of other free, or moral, Agents.
IV. OF the Reasons for, and Fitness of, subjecting Mankind to the Action, and Intervention, of those moral Agents, which are their *fellow Creatures*, in general.

PART VIII.

Of the *Laws* of SOLE MORALITY, and their *Fitness*.

AFTER the foregoing Inquiry concerning the Fitness, and Use, of those Circumstances of Man's Existence, which subject him to the Consequences of his own Agency, in general: we proceed to a more particular Examination of that Part of them, whereby each Individual is dependent on his own Actions, in particular; in the following

SECTIONS.

- I. OF the several Points, and Degrees, in which the Individuals of the human Species are dependent on their own immediate Actions.
- II. OF the Government, and Improvement, of the *Understanding*; as it is made necessary to Man, and depends on his own Action; under various Penalties.
- III. OF the Government, and Care, of the *Body*; as each individual stands thereto oblig'd: and the Penalties attending its neglect, or abuse.
- IV. OF the Use, Bounds, and Fitness, of the

- Passions*, for both those Purposes: and the Penalties attendant on their misuse.
V. OF the due Provision of *external* Means, for all those Purposes: as each individual stands thereto oblig'd, under other Penalties.
VI. OF the particular Reason for, and moral Fitness of, this Part of the Laws under which the Individuals of Mankind are, in great measure, dependent on their own Actions consider'd as the Appointment of the *first Cause*, for the Purposes of Man's present and future Existence.

PART IX.

Of the *Laws* of SOCIAL MORALITY, or HUMAN SOCIETY, in *general*, and their *Fitness*.

HAVING seen how the Nature of Things compel the Individuals of Humankind to a Care of themselves *solely* considered; we proceed to examine how they stand oblig'd to a *social Life* with each other; partly under the same, and partly under another Set of Penalties; which will be considered, in general, in the subsequent

SECTIONS.

- I. OF the several Circumstances and Wants of Mankind, which, as so many Laws, make a *social* Life necessary to Man; under their various Penalties.
- II. OF the Kinds and Degrees of *Similitude* which run through the whole Species, and

hold them to the general Law of Society; and of the Kinds and Degrees of *Dissimilitude*, which fit the Individuals, respectively, for sustaining the different Offices of it.

- III. OF the several Degrees, and Kinds, of

8. ELEMENTS OF LAW IN GENERAL. Book I.

Society, to which Men stand oblig'd thereby, both *private* and *publick*; under their various Penalties.

IV. OF the Use and Fitness of the *social Passions*, for those Purposes; and the Penalties that attend their Misuse or Abuse, in general.

V. OF the moral Fitness and Use of these Circumstances of the human Nature in general; which subject Mankind to, and make them dependent on, each others Actions mutually, in various Ways; considered as the Design, or Appointment of the *first Cause*.

PART X.

Of the *Laws* of *PRIVATE Society*, and their *Fitness*.

FROM considering the Laws of human Society, in *general*, we proceed to state and examine, more particularly, that *private Society*, which the Individuals of Mankind, are, by the Nature of Things, obliged to cultivate with each other; under the *Direction* of the *private* Understanding, and the *Guard* of the *private* Force or Powers of those Individuals respectively; where their several Wills are so many *private* human Laws, to the Observance of which, Men stand oblig'd, under the Rewards and Penalties of *private Friendship* and *Resentment*, of various Sorts; so far as those are permitted, by that *publick* Society, and those *publick* Laws, which will be considered in the next Part of this Book.

AND here it may not be amiss to observe, that this *private* social Life, seems to be that, which some Writers, emphatically, call the *State of Nature*: And from whence, as if it were the only State natural to Man, they attempt to deduce that imperfect, and in divers Points erroneous, Body of Rules, which they call, *the Laws of Nature*.

WHICH Error, and its Consequences, will be refuted by the whole Thread of this first Book, as it will thereby appear, that the Laws of the human Nature cannot be, justly, stated, but from the *whole Progress* of that Nature; and not from any *particular* State, or Part of it. But to return to our present Point, this *private* Society and its Laws, which are, indeed in part, the most immediate Objects of *publick* Society, will be here considered in the following

SECTIONS.

I. OF the several Circumstances which, as so many Laws, compel Men to a *private* social Life with each other; under their various Rewards, and Penalties, in general.

II. OF the Difference of the Sexes, with the *Connubial Society* thereon founded, and its Laws; under divers Penalties.

III. OF the *Parental Society*, as it arises from the Connubial, and its Laws; under their particular Penalties.

IV. OF the *Herile Society*, between Master and Servant; as it is founded on different Talents of Body and Mind, internally; and other Circumstances, externally, with its arising Laws, under various Penalties.

V. OF that *universal* private Society to which all Men are held, as Inhabitants and Cultivators of the Earth, as well for raising, as enjoying the Necessaries of Life; with its Laws, as they are the Foundations of *Property*, in general, and all Kinds of *private Commerce* in particular, under a Variety of Penalties.

VI. OF divers of the more indeterminate Parts or Offices of private Society, for the occasional Purposes of human Life; where of general *Beneficence*, and particular *Friendships*; with their Necessity, and Laws; under their several Penalties.

VII. OF

- VII. OF the Means by which the Individuals of the whole Species are *distinctly* determined to these private social Acts, towards each other, in particular; for which they are form'd in general. Where, of *Signs*, or *Language*, and *Veracity* therein, in general, with *Promises* and *Contracts*, &c. in particular; and their various Laws.
- VIII. OF the *Precedence* and Order of the Obligations arising from these different Offices of private Life, where, by accident, they come in Competition with each other: And the Penalties attending on Breaches of that Order.
- IX. OF the Fitness of the *social Passions*, both concupiscible and irascible, as they are partly the Spurs to, and partly the Guards and Inforcement of, private Society, in all its Parts; with their Use and Bounds, under various private Penalties, that attend their Defects, Perversion, or Excess.
- X. OF the moral Fitness of all these Parts of private Society in particular; considered as the Institution and Appointment of the *first Cause*; for the present, as well as future Purposes of human Existence.

PART XI.

Of the *Laws* of PUBLICK or CIVIL SOCIETY, and their *Fitness*.

FROM the Defect, or Excess, which attends the unlimited Use of Mens private Understandings, Powers, and Passions, in the Exercise of that *private Society*, which we come last from considering; Mankind are invited by many Benefits, on one hand, and compell'd by many heavy Penalties, on the other, that is by so many *Laws* of their Nature, to submit to the Guide of a *publick Understanding*; and seek the Protection of a *common Force*, in many Points, that are the common Concern of all: Which is acting in that *Publick or Civil Society*, which we come now to consider.

WITH respect to which 'tis also to be observed, that the same Nature of Things, that induces them to do so in general, under one Set of Penalties, does not forsake them there; but obliges them to the Observation of a great Variety of Rules, in so doing; under another Series of Conveniencies and Inconveniencies, which follow in various Kinds and Degrees, according as those Societies, and the human Laws that regulate them, are more or less conform'd to the Nature of the Things they regulate; the doing of which, in every Point, is the great Business of Legislation, as we shall see in every Part of human Laws, when we come to consider them.

THO' at the same time, it may be asserted, as an universal Truth, that the worst System of Civil Society that ever was instituted, was attended with fewer Evils, than the intire Disuse of it would have been. So exactly do the *divine Laws* of Man's Nature exert themselves, in Proportion to his Compliance with, or Deviation from, them: The Examination of all which, in general Terms only, will be the Business of the following

SECTIONS.

- I. OF those Circumstances of human Life, which, as so many Laws, make it necessary to Mankind to use the Direction of a *Public Understanding*, and seek the Protection, or submit to the Controul of a *common Force*, in general.
- II. OF the *Right* thence arising, to Mankind on one Hand, and the *Obligation* they are under,

on the other, to act in such Society; antecedent to any particular *Compact*; in answer to those, who found all Civil Society, on *human Compact* only.

III. OF *Public Human*, or *Civil*, *Laws*, under immediate *Human Penalties*, as thence resulting; their Nature, Objects, Parts, Kinds, and Fitness, in general.

IV. OF those Parts of Private human Society, in which Mens *Private Dominion* over their *own Persons*, the *Persons* or *Actions* of *others*, and over *other Things*, is to be defended by public Civil Laws; though under no other Penalties than those of *private Reparation* to the Persons injured: Whence arise what I, therefore, call *the LAWS of PRIVATE CIVIL DOMINION and SUBJECTION*: usually called *PRIVATE LAW*, though improperly, because all Civil Laws are *public*; which Parts of Law, their Kinds, Reasons, and Fitness will be considered

In General, in this Section;

In Particular, in Book II.

V. OF those Parts of Human Life and Action, which ought to be directly *regulated* by, or *subject* to, the public Understanding; under *public Penalties* on the Offender,

because those Offences affect the whole Society: Whence arise what I, therefore, call *the LAWS of PUBLIC CIVIL SUBJECTION*; usually called *CRIMINAL LAW*: of which, its Objects, Kinds, Reasons, and Fitness,

In general, in this Section;

In particular, in Book III.

VI. OF those Rules, which are necessary to constitute the Being, and direct the Action, of that *public Understanding* and *common Force*, which must give Birth to, and execute, the two preceeding Bodies of Law: Whence arise what I, therefore, call *the LAWS of PUBLIC CIVIL DOMINION, or MAGISTRACY*, in all its Parts both *Subordinate*, and *Supreme*: Of which, their Objects, Kinds, Reasons, and Fitness,

In General, in this Section

In Particular, in Book IV.

VII. OF the moral Fitness of this Part of the Order of Things (which subjects Men, in this manner, mutually to each others Actions in Civil Society;) considered as the Appointment and Institution of the *first Cause*; for the Purposes of Man's present and future Existence.

P A R T XII.

Of the *Laws* of NATIONAL SOCIETY, and their *Fitness*.

AMONG the Circumstances, and Nature, of Things, which give Being to Civil Society, we have before observed, that no *one* publick human Understanding, or common Force, can exert itself beyond certain Bounds, without various Imperfections and Inconveniencies; which, as so many Laws, oblige Mankind to resolve themselves into *many* such Societies.

WHILE, on the other hand, the Nature of human Life on this Earth, makes a Communication between those Societies, or their Members, in some Cases, unavoidable; in many, very necessary; and in most, very convenient: Which mutual Intercourse, however, cannot, any more than that between Individuals of the same Society, be maintained, as it ought, without its particular Rules, whence arise, what I therefore call, *the LAWS of NATIONAL SOCIETY*: Usually call'd *the LAW of NATIONS*; whose Nature, Objects, Parts, and Fitness, will be consider'd

More *Particularly*, in Book V.

More *Generally*, in the following

SECTIONS

SECTIONS of this PART.

- I. OF those Circumstances, in the Nature of Things, which set *Bounds* to all particular Civil Societies, on which the Being of many such depend; with the Penalties that attend on their extending themselves beyond proper Limits.
- II. OF those Circumstances of human Life which hold all such Societies, or their Members, to a mutual *Intercourse* with each other, in a greater or less degree, under various Penalties; with their arising Rules and Duties; which are the *Laws* of *Peace* between them.
- III. OF those Facts and Circumstances, which compel such Societies to hold each other,

or, their constituent Members, to those Laws and Duties of Peace, by direct *Force* and *Compulsion*: with the Rules by which that must be done; which are the *Laws of War* between them.

- IV. OF the Fitness of this Part of the Nature and Circumstances of human Life (which subject *different* Multitudes of Mankind to the Guide of *different* publick Understandings, and at the same time hold them to their mutual Duties by the Laws we come from examining;) consider'd as an Appointment of the *first Cause*, for its general and particular Purposes.

PART XIII.

Of the FUTURE and IMMORTAL *Existence* of *Man*, or the HUMAN MIND, with its arising *Laws*.

HAVING, thus, gone through, and examined the Nature, and Laws of human Existence; so far as we perceive it by actual *Fact* and *Experience*: We come now to advance our Inquiries concerning it, into that *Futurity*, for which we have, antecedently, shewn that Man must be design'd, by the *first Cause*.

WHERE we have *three* Parts to execute: The first of which is, to carry the Argument for Man's future Existence; which was drawn *a priori*, from the *abstract* Idea of the *first Cause*, into a full Demonstration of the Certainty of that Existence, as one of the Laws of his Nature in general, by Proofs *a posteriori* from the Nature of his present Existence. The next is to examine how far another Thread of Reasoning will carry us, clearly, as to the *Nature* and *Laws*, of that future Existence, in particular. And lastly, we are to consider, what Effect that Discovery has, or ought to have, on Man's *present* Life and Actions, according as those two Parts of his Existence stand related to each other.

HERE, indeed, *actual Sensation* and *Experience* do, in part, forsake us; but as sure, and perhaps a more accurate Guide, will take their Places. For as those *abstract* Reasonings of the Geometers, concerning Things which fall not under the Senses, (such as the demonstrated Properties of a true *Circle*, or a true *Cone*, neither of which were, perhaps, ever seen) are more clear and exact, than any Mensuration or Operation, that can be *actually*, and *mechanically* perform'd about those Figures: So, tho' the Conclusions to be drawn in this Part, are not the Consequences of any particular Facts, Sensations, or Experience, they are, however, the Result of all the Facts, all the Sensations, and all the Experience, that ever were, or ever will be.

THAT is, they are nothing less than the full Result of the *whole Nature of Things*, collectively consider'd in one Body: And will therefore appear to have an *Evidence*, as
infinite

Infinite, as that Nature, in its *Extent*; as unformountable, in its *Force*; as uniform and invariable, in its *Tenor*; and as lasting, in its *Duration*. But, as this is, in some Sort, asserting before Proof, it had, perhaps, been better said, after we had gone through, with allow'd Success, what will be the Business of the following

SECTIONS.

- I. OF the Coincidence and common Tendency of all the preceding Reasonings, as they do, when taken together, amount to full Demonstration, that a *future immortal Existence* is one of the Laws, of the human Nature.
- II. THAT such future Existence must be the Result of a certain *established order of Things*, independent of human Action; as to its *absolute* Nature, in general, just as the absolute *physical* Laws of Man's Existence here are so.
- III. OF the Impossibility of discovering what, we (for want of a better Term) must call the *Physical Mode* and *Laws* of that Existence, in general; though, with particular *negative* Proof, that it cannot lye, locally, in any of the Scenes of this *visible Universe*, as they are such.
- IV. OF some Parts of the *moral*, or relative Nature and Circumstances of that future Existence, as they follow most evidently, from various Mediums of Argument.
- V. OF the Reasons for, and Fitness of, divers of the Circumstances of human Life and Existence here, which could not be so fully shewn, till our Reasonings were brought to this Point; but which will, now, appear in such a Manner, as to throw new Light and Evidence on the whole Doctrine.
- VI. OF the *Consequences* of all these Discoveries, with respect to the *present* Part of

human Life; and the Laws of Action thence arising. Where we shall find Mankind standing, directly, in those Relations (with respect to that Being, which we have, hitherto, call'd the *first Cause*) that are usually understood to arise between a *rational Creature* and his God; according to the more general Acceptation of that Term.

VII. OF the Necessity for, and Fitness of *this Part* of the Order of Things; which, with respect to Mankind, taken in general, discovers the Nature and Laws of their Existence; to *Individuals* in various Degrees, according as their Understandings are more or less apply'd to those Purposes; and to the *whole Species*, by the traditional and accumulated Reasonings of the successive Generations, which consist of those Individuals: whence that *Law* of their Nature arises, which relates to those *Discoveries*, under various Penalties.

VIII. OF that Body of Doctrine, in Theory; and Duties in Practice, which is, therefore, call'd NATURAL RELIGION; as it is the full and evident Result of all the preceding Thread of Reasonings; and contains the *whole Code of Laws* under which Man acts, both to the Purposes of his present and future Existence; so far as they are discoverable by Reason only.

With a short Sketch of which this Book, must necessarily be closed; as it is that Body of Doctrine, to which only, as common to all Mankind, we can properly refer, in points where Religion is to be considered, in those subsequent Elements of universal Law, which are designed to relate, equally, to all Nations.

B O O K. II.

E L E M E N T S

O F T H E

L A W S

O F

P R I V A T E C I V I L D O M I N I O N

A N D

S U B J E C T I O N ;

Commonly called

P R I V A T E L A W.

Q. Alle vero, &, ut oportet, a capite, frater, repetis quod quærimus; & qui aliter jus civile tradunt, non tam Justitiæ, quam litigandi tradunt vias. M. Non ita est, Quinte; ac potius Ignoratio Juris litigiosa est, quam Scientia. Sed hæc posterius; nunc Juris Principia videamus. Cicerò de Legibus, Dial. I.

I N T R O D U C T I O N.

HAVING, in the preceding Book, seen that the *Purposes* of Human Life, as instituted by its *Author*, in all its Circumstances, are to fashion Men for, and habituate them to *Selfgovernment*, and *social Action*: And it being, also, there shewn, that one of the Means proper for that Purpose, was to make it necessary for them to act, in many Points, with an *united Force*, under the Direction of a common or *public Understanding*; we have thence deduced, and stated, the Nature, and Laws of *Civil Society*, in all its principal Parts, in

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general

general Terms only; referring the minuter Consideration of the Rules, necessary for their Government therein, respectively, to the subsequent Parts of this Work.

ON which *minuter* Consideration we are now entering, and shall begin it, with an Enquiry into the Fitness of the Laws of that Part of Civil Life, in which the common or public Understanding (leaving each private Individual to the free Exercise of *his own* particular Capacities and Powers) is only active, in directing the *public Force* to their Defence, in that Exercise of them. Which Body of Rules I chuse to call *the Laws of PRIVATE Civil Dominion and Subjection*; because they are only declaratory of that *private* Dominion, which the Members of all Civil Societies have over their *own* particular Persons; or of the Power they may acquire over *other* Persons, and *other* Things; which, by such Acquisition, become in many Ways, subject to them: In proper Contradistinction to *the Laws of PUBLIC Civil Dominion and Subjection*, which form the other two Parts of Civil Laws.

HERE we should likewise observe, that, as all other Parts of Law, whether those of *public* Subjection, *public* Dominion or *national* Society, are, in Reality, no more, than so many successive Means of maintaining this private Dominion and Subjection, that is the private social Life of Individuals, in the fullest Extent, and easiest Manner, that is consistent with human Existence; our exacter Enquiry into their several *Reasons*, must begin, from an accurate Prenotion of these *Ends*, to which they are all successively directed. Which Laws we will consider under the following Heads, in so many successive

PARTS OF THIS BOOK.

- I. OF Private Civil Dominion and Subjection, with its Laws in general.
- II. OF the private *absolute* Dominion or Right, which Individuals have over, or in their own Persons; and the *Laws* that support it.
- III. OF the private *relative* Dominion or Rights which Individuals may acquire over, or in other Persons, or their Actions; and the *Laws* that inforce them.
- IV. OF the private civil Dominion which Persons may acquire over all *irrational Things*; and its Laws in general: Call'd in *English* the Laws of *private Property*.
- V. OF the Laws of Property in Things of a *consumable* or *moveable* Nature in particular.
- VI. OF the Laws of Property in Things of an *inconsumable* Nature, in general: Being the Doctrine of original Property in them; as it is the *Source* whence most of the *other Kinds* of Property are derived.
- VII. OF the Laws of *partial Property*, as thence deriv'd, by a Distribution of the *different* Products, or Uses, of the *same* Portion of the Earth to *different* Persons.
- VIII. OF the Laws of *limited* Property, as thence, also, deriv'd, by certain Limitations set to the *Duration* and *Extent* of the Proprietor's Right; being, according to the Style of the *English* Laws, the *Doctrine of ESTATES*.
- IX. OF the Law of *conditional* Property; as thence likewise deriv'd, by certain transient or permanent Conditions, annex'd to the Beginning, or Continuance of the Proprietor's Right; where of *feudal* Property in general, and *English* Tenures in particular.
- X. OF the Laws of Property in *Trust*, to other Persons *Uses*; as thence also derived, by a supposed Separation of the Right of *Retaining* from the Right of *Enjoying*.
- XI. OF the Laws of *joint* Property; as thence likewise derived, by a Disposition of the same intire, or individual *Proprium*, jointly, to *more* Persons than *one*.
- XII. OF

XII. OF the Laws of Property, in Things of an *incorporeal*, as well as inconsumable Nature.

XIII. OF the Rights and Laws peculiar to those Persons, who are under some *private Incapacity*, either of *managing* the private Rights and Dominion which they have, or of *acquiring* such as are merely necessary for their Subsistence; therefore called the Laws of *private Incapacity*.

PART I.

Of the *Laws* of PRIVATE *Civil Dominion* and *Subjection*, IN GENERAL.

THE *general* Consideration of the Subjects of this Book, as they are to be stated from the Reasoning laid down in the first Book, will be here delivered in the following

SECTIONS.

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| <p>I. OF those Parts of <i>private</i> human Life and Action, in the Exercise of which, 'tis necessary the publick Understanding should permit, and the publick Force support Men; usually called <i>private civil Liberties and Rights</i>, in general.</p> <p>II. OF the several Kinds and Differences of <i>Persons</i> concerned in, or capable of, those Rights and Liberties, in general.</p> | <p>III. OF the several Circumstances and Facts by which those Liberties and Rights may be acquired; where of <i>Nativity</i>, <i>Promises</i>, and <i>Contracts</i>, &c. their Nature, Kinds and Obligations, in general.</p> <p>IV. OF the <i>Signs</i>, <i>Language</i>, or <i>Instruments</i>, &c. by which such Facts, Acquisitions, or Obligations may be expressed or registered.</p> |
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PART II.

Of the *private*, *absolute* DOMINION, or *Right* which *Individuals* have in their OWN PERSONS; and the LAWS that *support* it.

AFTER this *general* View of these Objects, and ultimate Ends of all Civil Laws, the first Object of our *particular* Consideration is that *private* Command over their own Persons, *absolutely* considered, which is so indispensably necessary to Mankind, for the just Exercise of every Part of Life, whether Sole or Social; for without it, they can neither fitly acquire, nor justly enjoy, their *relative* Rights in Persons or Things. *Note*, The Subjection Men stand in to the *Publick*, or Societies, will be consider'd in the next Book, while this private Dominion will be stated in the following

SECTIONS.

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| <p>I. OF Right to Life, and Integrity of Person; in Opposition to violent <i>Death</i>, <i>Wounds</i>, <i>Maims</i>, &c. and the Laws that defend it.</p> <p>II. OF Right to Freedom of Body and Mind in general; in Opposition to forcible, <i>local</i> <i>Restraint</i>, <i>Fear</i>, &c. with the Laws that guard it.</p> | <p>III. OF Rights to a <i>free</i> Application to all the Offices of private Life, not contrary to Men's particular, or general Obligations; with the Laws that support them.</p> <p>IV. OF Rights to <i>Reputation</i> in various Degrees and Kinds; and the Laws that defend them; in Opposition to <i>Slander</i>.</p> |
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PART

PART III.

Of the *private* RELATIVE *Rights* or DOMINION, which *Individuals* may acquire over, or in OTHER PERSONS, or their *Actions*; and the *Laws* that enforce them.

MANKIND being thus defended in their absolute personal Rights in general; the Nature of their Existence makes it necessary for them to put on various *Relations* or *relative* Rights, both to particular Persons, and Things; in doing of which they are left to the Use of that *private* Liberty, in which the preceding Laws defend them. So that, herein, their own *private Actions* become so many *Laws* to themselves; and, except it be in the Appointment of some mere *external Forms*, Civil Laws have little more to do than to affirm the Rights and Engagements thence arising, if they happen to be controverted.

AND here, though some Dominion at least over *Things* (that is, Property) may be more immediately necessary to every Man than any *personal* Engagements; yet, as those Engagements are of a simpler Nature than many of the Laws of Property, I shall first consider that Part of them which are terminated in personal Duties of Action only, without involving any *distinct* Idea of Property: Leaving those that do so to their Places in the following Part of this Book: and examine the others in the subsequent

SECTION S.

- I. OF those *Wants* of mutual Assistance and Action, which render certain personal Engagements necessary to Mankind, their Sorts and resulting Obligations, in general, so far as they are Objects of civil Compulsion.
- II. OF that *principal* Contract between Individuals of different Sexes, for mutual Society, and Propagation of the Species; the mutual Relations, Rights and Obligations thence resulting, *in the first Instance*, where of *Espousals*, *Marriages*, &c.
- III. OF the personal Relations thence derived, *in the second Instance*, by such Propagation and Birth; with their arising Rights and Obligations between Parents and their Children; so far as they become Objects of civil Laws.
- IV. OF the Relations of *Consanguinity*, or *Affinity* thence derived, *in the third*, or further Instances, as they become Foundations of private civil Right, and Objects of Law.
- V. OF other private personal Relations of a durable Nature, which Men enter into by

express Contracts; such as *Partnerships* in Action, and *Services* for a Term of Time, to general, or particular Purposes; with their consequent Rights and Obligations as enforced by Laws. Where, of *perpetual Servitude*, commencing by Victory in War, Purchase, or Contract.

VI. OF personal Relations of a more *transient* Nature, that are terminated in some particular Action; such as those arising from express Contracts for doing a *single* Act, or *particular* Piece of Work; with their arising Consequences and Laws.

VII. OF private personal Relations, arising from *tacit* Contracts; such as those between Persons exercising any particular Trade or Profession, and the Persons that employ them, without *express* Contract; their reciprocal Duties and Laws.

VIII. OF personal Relations, arising *without Contract*, by certain voluntary Actions done for the *Benefit* of others, without their Requests; with their emerging Rights and Obligations.

N.B.

N. B. *Voluntary Actions to the Detriment of others, of all Sorts, have their Places under the Article of Wrongs, to all the preceding, or subsequent Rights, &c.*

IX. Of the Derivation, or Transfers, of any of these Relations, or their resulting Rights

and Obligations, from the Persons originally concerned, to others; with their several Modes, Consequences and Laws. Where, of *Fidejussors; Bondsmen; Assigns; Executors; and Heirs, &c.*

PART IV.

Of the PRIVATE *civil Dominion or Right* which PERSONS may acquire in THINGS; and its *Laws, in general*; usually called the *Laws of PRIVATE PROPERTY.*

THOSE private relative Rights that Mankind may acquire in each others *Persons or Actions*, which include no distinct Idea of Property, with their arising Laws, thus examined; we come now to enquire into the Powers they may gain over the various *Things* necessary for human Life, called *Property* in them; which, being a Right to the *sole* Command and Use of any Thing, arises from the Impossibility there is that any one Thing should serve two Persons, to all its possible Purposes, at one and the same Time: And gives, therefore, Birth to a very large, but very necessary, Body of Laws, for determining who should have that Command over them.

FOR, as all Things necessary for Life are capable of being wasted or worsted, saved or improved; if the Consequence of such wasting or worsting, on one Hand, and such Saving or Improvement, on the other, did not, by the Laws of Property, light on the Persons who were the respective Causes of them, the whole Burden of human Life would fall on the few Frugal and Industrious; 'till Profusion and Idleness had reduced the World to a Desert: So weak are the levelling Schemes of warm Heads, and so vain the Chimæra of enjoying all Things in common.

SOME of these Laws, while wrapt up in Terms of Art, and confusedly disposed, seem, in many Parts, a little intricate, particularly to Beginners; but may, however, by Distinction and Order, be rendered plain enough to the Attentive; especially if, like the Geometers, we begin with the *simplest*, and advance gradually to the most *compound* Parts of this Doctrine; which will be begun, in general in the following

SECTIONS.

I. OF the Necessity of *Property*, to human Life, the Things in which it may be, and the Persons that may have it; with the Means of acquiring it originally, in general.

II. OF the Proprietor's *Rights* in his *Proprium*, which, in general, are those of *Retaining, Using, and Disposing*.

III. OF the Proprietor's Right of *Disposing*, more particularly. Where of *Lending*,

Letting to Hire, Exchanging, Selling, Giving, and transmitting by Descent: with their Correlatives, *Borrowing, Hiring, Exchanging, Buying, Receiving, and Succeeding by Descent*; and the Laws thence arising.

IV. OF *Wrongs* done to the Proprietor's Rights, whether of *Retaining, Enjoying, or Disposing*; with their Consequences in a new Sett of Rights, Obligations, and Laws.

PART

PART V.

Of the LAWS of *Property* in Things of a CONSUMABLE or MOVEABLE Nature in *Particular*.

THE Necessity and Nature of Property thus explain'd, in general; we proceed, according to the propos'd Method, to consider the simplest Kind of it; which is in those Things that *perish* in the using; or are of so *moveable* a Nature, that they may be as effectually secreted or lost, as if they were actually perished: and are therefore subject, in many respects, to the same Laws with Things actually perishable; of all which in the subsequent

SECTIONS.

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| <p>I. OF the several <i>Kinds</i> of consumable or moveable Things, in which Property may be acquired.</p> <p>II. OF the <i>Acquisition</i> of Property therein; whether intire or partial; sole or joint: with their several Laws, whereof <i>Pledges</i> and <i>Depositums</i>.</p> <p>III. OF the Proprietor's <i>Rights</i> therein, whether of retaining, using or disposing; with their Laws.</p> | <p>IV. OF the various <i>Wrongs</i> to such Rights therein; and their Consequences, in the new Rights and Obligations thence emerging.</p> <p>V. OF those Laws and Appointments, by which a certain Degree of civil <i>Permanency</i> and <i>Duration</i> may be given, to such, otherwise, <i>perishable</i> Things; and their consequent Rights &c. in general.</p> |
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PART VI.

Of the LAWS of *Property* in Things of an INCONSUMABLE NATURE in *general*, being the *Doctrine* of ORIGINAL PROPERTY in them.

PROPERTY in its most general Nature, and the simplest Kind of it, in *moveable* or *consumable* Things, thus examined; we come to those of a more *permanent* and *compound* Sort; where, 'tis to be observed, in general, that Portions of the Earth we inhabit, are of so compound a Nature in themselves, by the Variety of their Products, or Uses, and at the same time so durable, that it is the various Restrictions, Limitations, or Conditions, under which Mankind have distributed those Portions out to each other, according to their several Wants and Designs, which give Rise to the more intricate Parts of this Doctrine:

AND, in order, therefore, to deliver and examine it with the greater Clearness, we will begin with the Idea of *entire* and *unlimited* Property in them, called by the *Latins*, *Plenum Dominium*, and may, not insignificantly, be called *Original Property*, in *English*: The Consideration of which, in general, will lead us distinctly into all its Consequences, as will appear in the following

SECTIONS.

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| <p>I. OF <i>Original Property</i> in Portions of the Earth; the Persons and Means by which it really was, or by which, for Distinction's Sake, we may suppose it was acquired.</p> <p>II. OF the Original Proprietor's <i>Rights</i> in such</p> | <p>a <i>Proprium</i>, which, in general, are <i>retaining</i> and <i>using</i> it to all its possible Purposes, or <i>disposing</i> of it entirely, or partially, and that with various Limitations or Conditions.</p> |
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III.

III. OF the Original Proprietor's Right of disposing *Part* of the Uses to which a Portion of the Earth is serviceable, and retaining the Thing, with its other Uses, to himself: whence have arisen various Kinds of *partial Property*, and as many Sets of reciprocal Rights and Obligations.

IV. OF the Proprietor's Right of setting some *limited Duration* to the Dispositions he makes of his Property: whence have arisen all *limited Estates* for Lives, Years, &c. with another Kind of reciprocal Rights and Obligations.

V. OF the Proprietor's Right of making any, or all the precedent Dispositions of his Property, either *absolutely*, or on certain stipulated *Conditions*; and those either transient, or permanent between himself and the derivative Proprietor: whence have arisen a

great Variety of *conditional Property*, and as many various Kinds of reciprocal Duties and Obligations.

VI. OF the fictitious Power of *separating* all the possible *Uses* of a Thing, from the Right of *retaining* it; and vesting them in different Persons: whence has arisen *Property in Trust*, to other Peoples *Uses*; whether particular Uses, or Uses at large; and a consequent Set of Rights and Powers, both in the Person retaining, called a *Trustee*, and in the Person using, who may, by Analogy, be called an *Usee*.

VII. OF the Original Proprietor's Right of disposing, or transmitting any intire *Proprium Jointly*, to more Persons than one, whence has arisen *Joint Property*, with its several Rights, and Laws.

PART VII.

Of the *Laws* of PARTIAL *Property*, as they arise from a *Distribution* of the DIFFERENT PRODUCTS, and USES, of the *same Portion* of the Earth to DIFFERENT *Persons*.

THOUGH no one Portion of the Earth can serve two Persons, at the same Time, to all its possible Uses, whether of enjoying, or disposing; yet may the various Products and Uses of which 'tis, at the same time, capable, be distributed to different Persons: as the *Herbage* to one, the *Trees*, &c. to another, the *Minerals* to a Third, and so on: where their *separate* Interests, in Things so naturally *united* by their Origin, necessarily produce a Variety of Laws, for regulating their mutual Rights therein; which, notwithstanding all such Precautions, so constantly clash, as to render some of these Kinds of Property very incommodious to the Possessors, and detrimental to the whole Society, by preventing Improvements, &c. but of that transiently. This kind of Property, and its Laws, will be examined in the following

SECTIONS.

I. OF these Kinds of *partial* concurrent Property, with the different Relations, Rights and Wrongs which they give Rise to, in *general*.

II. OF Property in the *vegetable* Products of other Men's Soil, of several Kinds, the mutual Rights of the Owner of the Soil, and the Persons to whom such Products belong, and the Wrongs to them.

III. OF Rights to the taking *wild* Animals in other Men's Soil, by *Hunting*, *Fishing*,

or *Fowling*, &c. with their arising Wrongs.

IV. OF Property in, or Rights to, the *Fossil*, or *Mineral* Productions of another Soil.

V. OF Rights to *Ways*, *Watering*, &c. in other Men's Lands.

VI. OF Rights to *use* other Men's Building for the *Support* or Foundation of our own, such as Property in the *upper Stories* of Buildings, usual in some Towns, and our own *Inns* of *Courts*.

VII. OF

VII. OF Property of these Kinds, as they may be vested in some Man's *Person*, or ap- pendant to some *other Portion* of the Earth: with their Rights and Laws.

PART VIII.

Of the *Laws* of LIMITED *Property*, as they arise from *Limitations* set to the DURATION and EXTENT of the *Proprietor's Right*;

Being according to the ENGLISH Laws,

The *Doctrine* of ESTATES.

BESIDE the foregoing Kinds of *concomitant* Property, which the various Products and Uses of any Portion of the Earth gives Birth to, the *indefinite*, if not *infinite*, Duration of those Portions gives the Original Proprietor an Opportunity of disposing of his Right in them for various *limited* Times, or Terms; and that, either *simply*, as to any Person for his Life, or for a Number of Years; or *subsequently* to one Person for his Life, and to another for Life or Years, &c. afterwards.

IN which Cases, the original Proprietor retains to himself, or his Representatives, his Right, in Things so disposed of, for all the Residue of that indefinite Duration of which they are capable; which remaining Right the *English* Law, in some Cases, calls a *Reversion*; because, at the Expiration of such limited Terms, his entire Right reverts or returns to him.

Now, this manner of *limiting* Property gives Birth to many necessary Rules, not only of *publick* Law; for determining, how far Men shall have Power to transmit such Limitations to Posterity; but also of *private*, to adjust the respective Rights and Interests of the Original, and the derivative Proprietors, in those Limitations which are *permitted*.

AMONG which Rules lye some of the more intricate Questions of either Law; though the Difficulties often arise, rather from the Significations of the Words, in which such Limitations are attempted to be expressed, than from the Things themselves; which are generally pretty plain, where that Signification is once agreed on; but of that transiently, this Doctrine of Estates will be examined in the following

SECTIONS.

- I. OF the various Kinds of *Limitation* that may be set, either to the *Duration* of a Proprietor's Right in his *Proprium*, or to his Power of *disposing* of it; with their Causes, and Consequences, in general.
- II. OF Property limited by the *Quantity* of *Profits* reaped; such as Assignments of Lands, &c. for the *Payment* of certain Sums, &c.
- III. OF Property limited by divers Portions of *natural Time*; as *Days*, *Months*, *Years*; with the respective Rights of the original and derivative Proprietor, where, of Property at mere *Will* or *Sufferance*.
- IV. OF Property limited by the *Duration* of *particular Persons Lives*; arising either from the Act of the *Parties*, where of ordinary Property for a Life, or Lives; or from the *appointment* of some *Law*; where, of *Tenant in Dower*, and by *Curtesy*; with the respective Rights and Powers of both the Proprietors; and the Wrongs to those Rights, &c.

V. OF

V. OF Property limited by the Duration of one Man, and the Descendents of his Body, by one particular Woman, whether Male only, or at large; with the respective Rights of the original, and derivative Proprietors in the first or second Instance, &c. Where of *Fee Tail Special, Tenant after Possibility of Issue extinct, &c.*

VI. OF Property limited by the Life of one Man, and the Issue of his Body in general, whether Male only, or at large; where of *Fee Tail General, &c.*

VII. OF Property limited by various other *Contingencies*, that are out of the Power of the Proprietors; for if they are in the Proprietor's Power, they become properly *Conditions*, and belong to the subsequent Part of this Book.

VIII. OF Property limited by *substituting* divers of the preceding Limitations, to take Place, one after the other, with their Effects: Where, of *executory Devises, contingent Remainders and Perpetuities.*

IX. OF Property, at large, to a Man and all his Consanguinity, called, in *English*, *his Heirs*, and his Property a *Fee Simple*; which, tho' it vests the Derivative, with all the Rights and Powers of the original Proprietor, is yet, both in Terms and in Effect, a civil Limitation; since, in case of Death without Alienation or Kindred, the Proprium, according to the Laws of most Nations, returns to some real, or supposed, original Proprietor, and is called in *English* an *Escheat*.

P A R T IX.

Of the *Laws* of *CONDITIONAL Property*, as derived from certain *Conditions* annexed to the *Proprietor's Right*.

Under which are contained,

The *Laws* of *FEUDAL Property*, and *English TENURES*.

AGAIN, the Proprietor who disposes of his Proprium, in any of the *partial, limited, or entire* Manners which we come from examining, may do it, either *absolutely*, or on certain stipulated *Conditions*; and those, either *transient*, and ending in a single Act, as Lands to a Man on the proviso that such, or such, an Act be done; or *permanent*, which go along with, and accompany those Dispositions through all the Time of their Duration, or through certain Parts of it, as Lands to a Man for Years or Life, &c. on Condition that he does certain annual or occasional Services, or pays certain Sums of Money, &c. annually.

THESE durable Conditions may, again, be *simple*, as those above-mentioned, or accompanied with certain personal Respects, of *Honour*, or *Fidelity*, or both, which the derivative Proprietor and his Representatives, are to perform to the Person of the original Proprietor, and his Representatives, who, in that Case, is called a *Valvasor* or *Lord*; which Lord, likewise, owes Protection to the derivative Proprietor, who is called a *Vassal* or *Tenant*, and the Thing so held, a *Feud*, in *Scotland* a *Feu*; but has not, in the *English* Law, any Name that distinguisheth it from things held by the simple Conditions, of mere Rents or Services.

THIS Kind of *Feudal Property*, introduced by the *Longobards, Saxons, &c.* has spread, more or less, all over *Europe*, and, from the vast Variety of its attendant Rights and Services, many of them local and peculiar, gives Birth to a long Detail of Laws, of which, the Rules of our own *Tenures* are evidently a Part; but, in considering them, I shall content myself with such general Views, as may serve to lay before my Readers, the Purposes to

which they were originally designed, their most fundamental Maxims, with their Benefits or Disadvantages to Civil Society in general. Conditional Property will be therefore considered in the following

S E C T I O N S.

- I. OF the several Kinds of *Conditions* on which Men may dispose of their Property, whether transient, or permanent; with their Uses, Fitness, and Effects, in general.
- II. OF Property on those *transient* Conditions, which, in a single Act, antecedently, give Birth; or subsequently, put a Period, to the Proprietor's Right.
- III. OF Property held on the simplest Kinds of permanent Conditions; such as ordinary Services, or Rents, whether *natural*, and in Kind; or *artificial*, in Sums of Money: With the mutual Rights and Powers of the *Landlord* and *Tenant*.
- IV. OF Property held by *Feudal Duties and Services*, in general; the Things or *Propriums* that are usually so held, from particular *Portions of Land*, up to *Sovereign Principalities* themselves: With the most remarkable Rights and Services attendant on them.
- V. OF the Feudal Services or Tenures, most frequent in *England*, in particular; with their larger Compositions, into *Manors*, and *Honours*, and their attendant *Courts* and *Regalities*: Under which, formerly, lay Part of the subordinate Government of *England*, both Civil and Military.
- VI. OF the original Derivation of those Tenures, from the *Crown*, or *King*, as Lord *Paramount*; his consequent Rights and Powers; with the Courts of the *Constable*, or *Earl Marshal*, and that of *Wards* and *Liveries* thereon attendant: Which involved some of the Civil, and the greatest Part of the old Military Government of the Kingdom.

P A R T X.

Of the LAWS of *Property* in TRUST, to other Persons USES.

NOR are we yet at the End of human Invention, for giving Permanency to their Property, and setting Bounds to the Dispositions they make of it. The Idea of a Proprietor's Right to retain his *Proprium*, without using it, has given Rise to the fictitious Separation of those Rights, by giving the Right of *Retaining*, to one Person; and the Right of *Using*, to others: Where the former is called a *Trustee*, and the latter may therefore be called an *Usee*.

THE first Intent of this Disposition was, doubtless, to make the Trustee, called in *Latin* *Fiduciarius*, absolute Master of the Thing; under no other Restraints than those of his, private, Honour and Prudence: But such Confidences were so frequently abused, as soon induced the Creators of them, to add some special Limits thereto; on which the Magistrate interposing, to settle the respective Rights of the Trustee and Usee, the Reasonings thereon grew, at last, to one of the most subtle Parts of Law.

FOR this *metaphysical* Doctrine of Property, (as I think it may be called) when followed, as it may be, and was, thro' most of the different Kinds of *Propriums* hitherto mentioned, in all their attendant Conveyances, Suits, Pleadings, &c. produced so much double Proceedings, so many Circuities of Action, and so much Intricacy in them all, as made a further Set of Regulations requisite, especially in our Laws. The Necessity for which, the Reader will perceive, by the second Section of this Head; where this Doctrine is pursued, in its unlimited State, through some remarkable Parts of Property, and by which he will the better understand the Limits actually

actually set to it, both by the *Roman* Laws, and our own. This Doctrine of Trusts and Uses will be stated in the following

SECTIONS.

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| <p>I. OF Property in Trust, its original Design, various Kinds and Purposes, in general.</p> <p>II. OF Property in Trust, to <i>private Uses</i>, considered, in its unlimited Consequences, through divers remarkable Heads of Law.</p> <p>III. OF Property in Trust, to private Uses, as it stands regulated by the <i>Roman Laws</i>.</p> <p>IV. OF Property in Trust to private Uses, as it stands regulated by the <i>English Laws</i>; especially the Statute for converting Uses into Possession.</p> | <p>V. OF Property in Trust to <i>publick Uses</i>, which cannot be conveniently converted into Possession, because they belong to an uncertain Multitude, such as some of the Persons mentioned in the last Part of this Book, and where the Trustee, tho' otherwise a private Man, becomes a sort of publick Magistrate for the Distribution of the arising Profits, &c. among that Multitude: Such as our own Trustees for divers charitable Uses, &c.</p> |
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PART XI.

Of the LAWS of JOINT PROPERTY, as they arise from the *same individual Thing's* being the *Property* of DIFFERENT Persons.

BUT notwithstanding all the preceding Cautions, which Men have taken to hold their private Rights and Properties, in Things, separately from each other; to avoid the various Inconveniencies that attend Community therein: Yet divers Circumstances of private civil Life throw them again into a Community; such as voluntary Gifts, Purchases, Descents in Law, &c. and that thro' most of, or all, the preceding Kinds of Property; which gives Birth to another Head of Laws, either, for adjusting the Manner in which they shall enjoy such Things, jointly; or, for dividing them into separate Propriums, where such Separation is practicable.

AND here it may not be amiss to observe, That these Kinds of Property are very different from that, which, in the seventh Part preceding, we have called *Partial Property*, which consists of really *separate* Propriums, in the different Products of the same Portion of Earth; whereas these arise from *one* and the *same* individual Proprium's belonging to different Persons, jointly; the Nature and Laws of which will be considered in the subsequent

SECTIONS.

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| <p>I. OF the several Facts or Accidents, which give Rise to Joint-Property, and the several Things in which it may be, with their Consequences, and arising Rights, in general, where of <i>Joint-Enjoyment</i>, <i>Joint-Conveyance</i>, <i>Partitions</i>, &c. in general.</p> <p>II. OF Joint-Property in <i>entire</i> Portions of Earth, or their <i>partial</i> Products; its arising Rights and Laws.</p> <p>III. OF Joint-Property in the <i>limited</i> Propriums before-mentioned, or Estates for Terms; its arising Rights and Laws.</p> <p>IV. OF Joint-Property in the <i>conditional</i> Pro-</p> | <p>priums before-mentioned; its arising Rights and Laws.</p> <p>V. OF Joint-Property in <i>Trusts and Uses</i>; its arising Rights and Laws.</p> <p>VI. OF Joint-Property in Things of an <i>incorporeal</i> Nature; its arising Rights and Laws.</p> <p>VII. OF those two Kinds of Joint-Property, which the <i>English</i> Law, in particular, distinguisheth by the Names of, <i>Joint-Tenancy</i>, and <i>Tenancy in common</i>; their different Rights and Laws.</p> |
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PART XII.

Of the LAWS of *Property* in *Things* of an INCORPOREAL, as well as an INCONSUMABLE *Nature*.

HITHERTO we have, principally, considered the private Dominion that may be acquired over *corporeal* Things, which have a physical Existence; whether they are the *consumable* and moveable Products of the Earth; or those *permanent* Portions of it, whence, as from so many Funds, such consumable Things are derived.

BUT besides these, the durable Nature of human Life and Obligations, (either in private Individuals, and their Representatives, or in civil Society) gives Rise to various Sorts of *permanent* Obligations and Rights; from whence, as from so many inconsumable Sources, human Subsistence is deriv'd, in a Manner something analogous to that deriv'd from Lands: Such as *Stipulations for the Payment of annual Sums*, for Years or Life, &c. Rights to the *exclusive* Exercise of several Trades and Arts, &c. and such are the Residue of an original Proprietor's Right, during the Time that a particular Estate is granted out of his durable Proprium, called, in the *English* Law, a *Reversion*: Such also are the conditional Reservations of *Rents* and *Services*, whether *Simple* or *Feudal*, on which Men convey their Estates: Which last Sorts we have already considered in part; but, as in many respects they lie under the Rules peculiar to Things of an incorporeal Nature, it will not be amiss to review them here, in that Light.

I AM sensible that divers of these Things are, by some Civilians, thrown into the Doctrine of Obligations at large; as they arise from private Contracts: But, as I am writing in *English*, and perhaps to *Englishmen* only, I shall herein conform to the Style of our own Laws, which, for many Ages, have treated some of them in a Manner similar, in divers respects, to Estates in Land: And as this Manner of stating them is, in itself, the most distinct, so it will be my Authority for ranging some others under the same Head; which, if it would not have seemed too great a Novelty, I might have styl'd *the Laws of durable Propriums, that have only a moral or civil Existence*, in Contradistinction to Lands, which have a *physical* one. Of all which in these

SECTIONS.

- I. OF the several Kinds of *incorporeal* Things, in which Property may be; their common Agreement among themselves, and their common Difference from those of a corporeal Nature, in the Manner of their Existence, and Acquisition, &c. in general.
- II. OF Property arising from mere *personal Contracts*, of a permanent Nature, for various Terms, as Years, Lives, &c. where of ANNUITIES, PENSIONS, OFFICES OF PROFIT about private Persons, &c.
- III. OF Property arising from personal Acts or Contracts of a durable Kind, but locally charged on Lands; where of RENT-CHARGES, CORRODIES, &c.
- IV. OF Property in Rights to the sole Exercise of certain *Trades, Arts, or Inventions*, for various Terms: which, taking Rise from publick Laws, are so many Funds whence human Subsistence is deriv'd.
- V. OF Property in *civil Offices of PROFIT*, which, by the Laws of various Countries, may be held for Terms, some of them hereditary, and transferable by private Contract: where, while publick Laws hold the Officer to his Duty, under divers Penalties, the Laws of private Property defend him in the Enjoyment of the Profits; which, in that Case, become a kind of private Property, with a publick Charge annex'd.

VI. OF

VI. OF Property in *publick Debts*; which, with their assign'd Securities for Payment of Interest, become, till they are discharged, so many Funds of consumable Property; whether existing in the Form of *joint Stocks*, or *separate Annuities*, &c.

VII. OF the Property an original Proprietor has in the Residue of a definite or indefinite Term, during the Time that a shorter Term is granted out of it; whether attended with conditional Rents, or Services, or not, called a *Reversion*.

VIII. OF that incorporeal Kind of Propriums which consists in Rights to *Redress of Wrongs*, especially to some kinds of durable Property; which (as Things of civil Existence, that may be retain'd, us'd, transferred, or extinguish'd, by Laws peculiar to themselves) are a kind of Property, in the

general Sense in which we have hitherto us'd the Word, for the Consideration whereof, this seems the proper Place; tho' the Forms and Methods of obtaining that Redress belong to the Laws of *judicial Magistracy*, in the 4th Book.

IX. *Lastly*, OF that most *compound Proprium*, which (to divers civil Purposes) collectively involves all the transferable Rights and Property of one Person, called, by the *Romans*, *Hæreditas*, in respect to the Heir; in *English*, by Periphrasis, A Man's *WHOLE Estate, Real and Personal*; which, tho' it may consist of Things corporeal and incorporeal, is yet, in that State of civil Union, an incorporeal Thing, whose Consideration seems properly to fall under this Head of Law.

P A R T XIII.

Of the RIGHTS, and LAWS *peculiar* to *Persons* under some PRIVATE INCAPACITY.

HAVING thus affirmed the Powers and Rights of the *able Part* of Mankind, and guarded their Acquisitions with a long Suit of Laws; both Humanity and just Policy, which are indeed the same Thing, bid us remember, that in a World, peopled with such frail Inhabitants, a great Variety of general natural Facts, or particular Accidents, lay some Persons, under a temporary *Incapacity*, of *using* or administering, in a proper manner, the Rights and Necessaries of Life which they *have acquired*; and place others, out of a convenient Possibility of *acquiring* those they want: All of whom (either as Persons that may be, or that have been, useful Members of the Society) have, therefore, a just Claim to the Care of the *publick Understanding*; and some of them, both to that, and the Assistance of the *publick Purse*.

I AM sensible, the Objects of these Laws are very differently placed, in different Systems of Law, some of them being handled in the Doctrine of *Persons*, before Property has been considered, tho' they include that Idea very distinctly; others of them being referred, in a very confused manner, to the Duty of some Magistracy, to which indeed they all in part belong, as they may come judicially before them: But, as they do, when justly considered, belong to this Body of private Law, and as the Necessity and Fitness for them all follow, evidently, from nearly the same Principles, I have ventured at the Novelty of collecting, and placing them together, under this common Title, of *the Laws and Rights of private Incapacity*.

WHERE, however, the Reader is desired to attend to the Limitation of *private Incapacity*; since *publick Incapacities* (except in the Case of *Aliens* before spoken to) are, in themselves, so many penal Sentences of the Law itself; and have, therefore, their Places in the criminal Part of it; of which Kind are many of our own, and some of the *Roman, Diminutiones Capitis*:
But

But of that transiently ; it is those *private* Incapacities, only, that will be considered in the following

S E C T I O N S.

- I. Of the several Kinds of these *private* Incapacities ; the Reasons for, and Ways of, providing against them, in general.
- II. Of the State of *Infancy*, with the Loss of Parents ; or with suspected or unnatural Parents, in those that have Property ; its Rights and Laws. Where of *Orphans* or *Minors*, and their *Guardians*.
- III. Of the State of *Idiocy*, in those that have Property. Where of *such* and their *Guardians*.
- IV. Of the State of *Lunacy* in those that have Property, its Rights and Laws. Where of *Lunatics*, and their *Guardians*.
- V. Of the State of *Infancy* and *Poverty*, without Parents, or, with such as are themselves incapable ; its Rights and Laws. Where of exposed and *Foundling Children*, and their Care, in various Ways.
- VI. Of the State of *Poverty* in *Adults*, with Sickness, decrepit old Age, and Lunacy. Where of *Hospitals*, *Alms-houses*, and *Bethlehems*.
- VII. Of the State of *Poverty* in *valid Adults*, but without present Opportunities of subsisting, tho' willing, and industrious ; its Rights and Laws. Where of *Work-houses* for such, &c. Note, Idleness, and Vagrancy in this State, with Bridewells, &c. are the Objects of criminal Laws : And though, for Convenience, their Provision may be, locally, the same, yet 'tis under very different Rules ; and should be, if possible, in different Places also ; because bad Examples are more apt to spread than good ones, especially among that Rank of Men.



BOOK III.

E L E M E N T S

Of the LAWS of

PUBLICK CIVIL SUBJECTION,

USUALLY CALLED

CRIMINAL LAWS.

*Omnia scire, non omnia resequi; parvis peccatis, veniam; magnis, severitatem commodare: nec
pœnâ semper, sed sæpius pœnitentiâ contentus esse.* Tacit. vit. Agricol.

INTRODUCTION.

THE former Book having considered the Nature of, and Reasons for, those Laws by which Men are immediately maintained and supported in the Exercise and Enjoyment of their *private Rights*, and social Life; we come, in the present, to examine the Expediency of those *publick Restraints* under which they are usually laid, as so many fit Mediums for the fuller, or easier, obtaining the former Ends; for such, on a just Examination, they will all be found:

THO' there is this Difference between them, that those were a Body of Rules, to the Observance and Support of which the *whole Society* is tied, for the sake of each Individual immediately, and the Publick more remotely; whereas these are a Set of Laws, to which each *particular Person* is obliged, for the Benefit of the Community, primarily; and his own, but in the second Place; but forming, both together, that Reciprocation of Duties, on which all social Happiness in Civil Society must depend.

SOME of the Rules of this Head are, indeed, such as require the Legislators exactest Attention, lest, instead of preventing, they should occasion Mischief; but, when wisely instituted, they are of great Use, for private as well as publick Good; contributing in the highest Degree to make the Society quiet, and flourishing, internally; powerful, and therefore peaceful, externally;

nally; and durable, in all those respects. All which will be considered in the several subsequent

PARTS OF THIS BOOK.

- I. OF *Publick Civil Subjection*, as it arises from the several Duties that the individual Members of Civil Society owe to the Publick, and its Laws in general.
- II. OF the Laws that are designed to *prevent* the Breach of all Publick Duties in general, by *Publick Regulations of Religion*.
- III. OF the Laws that are designed to *prevent* the Breach of all Publick Duties in general, by *Publick Regulations of Education*.
- IV. OF the Laws that declare, and punish the Breach of, those Duties that Men, in *all States* of Private Life, owe, *indirectly*, to the Publick.
- V. OF the Laws that *declare*, and punish the Breach of, those Duties which Men, in the *particular Professions* of Private Life, owe, *indirectly*, to the Publick.
- VI. OF the Laws which punish the Breach of those Duties, that all the *subordinate* Members of Civil Society owe, *directly*, to the publick Government, or *Magistracy* itself.

PART I.

OF PUBLICK *Civil* SUBJECTION, and its LAWS, in *general*!

BEFORE we enter on a specifick Examination of these Laws, and their Objects, in particular, it will be very proper to consider the Duties on which they are founded, with their Nature and several Kinds, &c. in general; which will be done in the following

SECTIONS.

- I. OF the *Duties* which the several Members of Civil Society owe to the Publick, as the Foundation of these Laws, in general.
- II. OF the several publick *Inconveniences*, *Damages*, and *Crimes*, that arise from the Breach of those Duties.
- III. OF the several Kinds of publick *Prevention*, *Restraint*, *Correction* and *Punishment*, their Degrees and Fitness, as Remedies, in general.
- IV. OF the Idea of *Distributive Justice*, as stated by some Writers; and, whether there is, or can be, any other Moral Relation or Proportion between Crimes and their Punishments, than those of repairing Damages, amending the Offender in present, and preventing the like for the future?
- V. OF the Nature and Use of *Remissions*, or *Suspensions* of Punishment, and *absolute Pardons*, with their proper Objects, and Laws, in general.

PART II.

Of the LAWS that are design'd to PREVENT the *Breach* of all PUBLICK DUTIES in general, by *Publick Regulations* of RELIGION.

THIS general View having shewn us, that the *Prevention* of Evils is among the most eligible Means of Civil Government; and as, of all Preventions, those are the most effectual, that, by reaching

reaching the Heart or Understanding, take away the Will to offend, *Religion* must, in various Lights, be the Object of the *publick Understanding*.

FOR, as its just *Inculcation* may be one of the firmest Bonds of Society, so, both its *unregulated* Influence, and *injudicious* Regulation, often have been, and always must be, productive of some of the most fatal Disturbances to civil Peace; which possible, or rather certain Effects of it, in all those Ways, give it justly the *first* Place in this Head of Laws; where it will be considered in the following

SECTIONS.

- I. OF *Religion*, and Mankind, as they are, by the Nature of their Being, *Worshippers* of some God; whence arises the Necessity for some Regulation thereof, with what that ought to be in general.
- II. OF Laws that establish the *publick Teaching* of the Doctrines of some Religion in *Theory* only, and their Necessity; to prevent the infinite various Illusions of private Opinions, and their evil Consequences: And how far Men may be compell'd to a due *Examination*, only, of that Theory.
- III. OF Laws that establish *publick Acts*, and *Ceremonies* of *Worship*, in Conformity to such publick Theories; and how far Men may be compell'd to a Participation therein.
- IV. OF Laws that tolerate the *publick* teaching of *private Opinions*, or Systems of Religion; their Nature and Bounds.
- V. OF Laws that tolerate the *publick* Exercise of *Acts* and *Ceremonies* of *Worship*, according to such private Opinions; their Nature and Bounds.

PART III.

Of the LAWS that are designed to PREVENT the *Breach* of all PUBLICK DUTIES in general, by the *Publick* Regulation of EDUCATION.

MENS Minds, thus armed against Delusions, by the Care of the publick Understanding, and *instructed* in *Doctrines*, that must teach them, that one of their principal Duties, in this Life, is to perform all the Offices of it, in due Submission, either active or passive, to the Laws of the Society of which they are Members;

THE next Means of preventing Evils are the Rules which the Legislator provides, at least, where he does not prescribe, for *educating* the growing Generations, in proper Habits of *Mind* and *Body*, whether *Intellectual*, *Moral* or *Technical*; for on those depend, in every Way, their future Usefulness, to themselves, each other, and the Publick: Which will therefore be considered in the following

SECTIONS.

- I. OF *Education* in general, and the Laws that merely provide *publick Means* for it, in every Way, without Injunctions for using them.
- II. OF Laws that regard or regulate Education in the *Mechanick Arts* of raising, or fabricating the various Necessaries of Life. Where of *Apprenticeships*.
- III. OF Laws that regulate or regard Education for the *Mercantile* Purposes of exporting and importing, or Domestick Dealing in those Commodities.
- IV. OF the Laws that direct the forming of Men for the publick Practice of the more liberal Professions, especially *Medicine*, *Law* and *Divinity*.
- V. OF Laws that regulate *Diversions*, both private and publick, of all Sorts; which, as they tend evidently to induce various Habits, both good and bad, of Body and Mind, are manifestly Objects of the publick Understanding. Where of *Games* of all Kinds, *publick Spectacles*, *Plays*, &c.
- VI. OF

VI. OF Laws that regulate the *uncommission'd Assembly of Multitudes*, which, though safely suffered, among a well-disciplin'd People, to many innocent Purposes, cannot lie, wholly,

beyond the Eye, and Hand of *legal* Controul, without great Danger both to *private* Persons, and the *Publick*.

P A R T IV.

Of the LAWS that *declare*, and *punish* the Breach of, those DUTIES, which Men, in ALL STATES of *Private Life*, owe, *indirectly*, to the Publick.

NOR is it sufficient to form Men, *antecedently*, by Religion and Education, to the Duties of civil Life, in order *wholly* to prevent Misdoing: The publick Understanding must accompany them on, thro' the *actual Exercise* of the various Offices and Parts of it, restraining, by *positive* Punishments, as they occasionally arise, many Offences that the former Precautions could not prevent; which is the only Medium of governing approved of by some Reasoners, though, it seems, a little incautiously; since, without some Degree of those *previous* Preventions, these *subsequent* Remedies would, in many Cases, be ineffectual, and in some, the Occasions for them become so numerous, and universal, as to render their Restraint, by *immediate* Punishment, impracticable; but of that transiently.

As to these Laws which look both Ways, and punish the *Past* in regard to the *Future*, we will first examine that Part of them, which, without any *direct* regard to the *Magistracy*, restrain Mens Actions, in *private social Life*: And though many of them, when considered in their *single* Instances, seem to affect the whole Body but lightly; they are yet of such a Nature as, if practiced by *Numbers*, would be highly detrimental, if not intirely destructive to it.

FOR which Reason, they are punished variously, rather in proportion to the *Obstinacy* of particular Offenders, or the *popular* Inclination of Multitudes to the like Offences; than to the individual Offences considered in themselves; and are, for the same Reason, often ranged, in Discourses, according to the several Kinds and Degrees of assigned Punishment; which may be very convenient for *Practice*, but the Order of Things whence they arise, as stated in this Book seems fitter to give the Student methodical and just Ideas of them: For which he is also prepar'd by the mere Hints of them let fall in general Terms only, in the several Parts of the preceding Book, to which they relate.

AND, as these Laws either regard Men in *all Conditions* of Life, or are *peculiar* to them under some certain *Characters*, or *Professions*, I shall reserve these last for the subsequent Part, and consider those more *general* Duties and Restraints only, in the following

S E C T I O N S.

I. OF the several Kinds of these *indirect Duties and Injuries* to Society, with the Reasons for their Restraint in general.

II. OF Laws that regulate Mens Government of their *own Persons*, in various Ways, as the Society is interested therein: Where of

Idleness and *Vagrancy* in the Poor; and divers Kinds of *Debauchery*, and *Self-Murder*, in both Poor and Rich, &c.

III. OF Laws that restrain Men as they are *Contractors*, by rescinding, or even punishing such as are contrary to publick Good: Where

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Where, of various *Combinations*, *Usury*, and *Wagers*, together with criminal *Breaches of Trust*, in Affirmance of some Contracts.

IV. OF Laws that appoint certain particular *Signs*, *Words*, and *Instruments*, for contracting or conveying; where the Prevention of infinite Uncertainty, and Disputes is the Good aimed at; and the mere *Nullity* of the Act is the *Punishment* of Nonconformity.

V. OF Laws that govern Men as *Proprietors*, as the Publick is interested in the *Uses*, or *Dispositions*, they make of their Property: Where of *Profusion*, and *sumptuary* Laws,

due Provisions for *Children*, *Perpetuities*, and *Mortmain*, &c.

VI. OF Laws which, over-and-above private Compensation, assign further Punishments for Injuries, of divers Sorts, to *other Mens Lives* and *Persons*, as the Publick is interested in their Welfare: Where of *Threats*, *Affaults*, *Maybems*, *Rapes*, *Murders*, &c. in that Light.

VII. OF Laws that, besides Restitution, inflict publick Punishments for various Injuries to other Mens *Property*: Where of *Theft*, *Robbery*, *Forcible Entry*, &c.

P A R T V.

Of the LAWS that *Declare*, and *Punish*, the Breach of, those DUTIES which Men, in PARTICULAR PROFESSIONS of *Private Life*, owe, *indirectly*, to the Publick.

THE immediately preceding Part of this Book having given us some Idea of the Private Duties, which Individuals, in *all States* of Life, owe to the whole Society, and the Laws that criminally punish the various Breaches of them; our next Business is to consider those which arise from certain *particular Characters* or Professions, which private Men put on, and the Laws which regulate and govern them therein, respectively.

FOR every Man, who assumes a Character to himself in civil Society, from the meanest, as that of a common *Labourer*, or *Servant*, for Example, to the most considerable of private Professions, such as *Merchants*, *Physicians*, *Advocates*; in a word, Persons of all particular Employments, owe, in that Respect particularly, certain Duties to the Society of which they are Members, as they receive Protection from it, under those particular Characters.

THIS Point, though it is true in all Cases, is most evident in such Professions and Mysteries, as are accompanied with *exclusive Rights* to the Exercise of them; which, as we have, seen in the Part which treats of Mens Education for them, is, by modern Usage, the Case of almost all Trades, &c. since it would be the highest Absurdity to suppose, that the Publick Understanding should vest certain Persons, only, with Rights to practise certain Professions, and yet leave them, therein, to their own Wills, entirely without Controul; because so doing, would be to expose Men mutually to each other's Crafts and Frauds, without Remedy.

FOR the same Education, and constant Practice, that qualifies them to perform those Things *better* than others, does, at the same time, make them more capable of *Deceit*, &c. therein: which is, in general, the Foundation whereon the Laws of this Class stand: Though it must be ownd, that they are some of those, which, if not well contrived, (to a certain Degree at least) do more Hurt than having none at all, in those Points, would; which is by no means the Case of the Laws of *Private Property* and *Contracts*, or those of *Publick Magistracy*, of which the worst, that ever were formed, are much better than none.

WHERE, nevertheless, it may be observed, that, as the very *Being* of Civil Society is owing to the Laws last-mention'd, so its *Well-being*, and flourishing State, are much owing

to those of this Head, when well contriv'd and duly executed; which will be examin'd in the following

SECTIONS.

- I. OF the Nature and Reasons for those Laws which govern Men under *particular Characters* and *Professions* of Private Life, with their Objects in general.
- II. OF the Laws that govern the *Lowest Order* of People, as mere Labourers, or Servants at large, &c.
- III. OF the Laws which regulate the Raisers, Preparers of, or Dealers in, the most *immediate Necessaries* of Life; such as Corn, Bread, Flesh, &c. who in very populous States and great Towns especially, are, if unregulated, capable of imposing on their Fellow-Subjects in many Ways. Where of *Weights, Measures, Prices, Markets, &c.*
- IV. OF Laws that regulate the Numbers, or Ways of working in various other *Mechanick Arts* and Trades, whose Wares are thereby capable of being reduc'd to any Standard of Goodness, or proper Degrees of Plenty and Cheapness. Where, of publick *Premiums* and *Discouragements*, according as those Arts are more or less useful, or wanted.
- V. OF Laws that govern *Domestick Dealers* in gross of all Kinds. Where, of *Fairs, Staples, Coin, Monopolies, &c.*
- VI. OF Laws that regulate the *Mercantile* Employments of carrying out *Domestick*, or bringing in *Foreign Commodities*, of all Kinds; which, of all the Laws of this Head, is a Part of Policy of the greatest Concern and Use to each Society, as their Riches at Home, and consequently their Strength and Power Abroad, are thereon most immediately dependent. Where, of other publick *Premiums, Discouragements, or Prohibitions.*
- VII. OF Laws that relate to the Government and Behaviour of those, that practise the more liberal and learned Arts, such as *Law, Medicine, &c.*
- VIII. OF Laws which regard those who voluntary offer themselves as *private Instructors* of the People, in any way whatever. Where, of the *Liberty of the Press* in general, and voluntary *Tutors* or *Schoolmasters, &c.* as they are a sort of Professions, in particular.

PART VI.

Of the LAWS that *punish* the Breach of those PUBLICK DUTIES, which all the SUBORDINATE Members of *Civil Society* owe, *directly*, to the GOVERNMENT, or MAGISTRACY itself.

THE Laws which govern Mens Actions, as they are *indirectly* related to the whole Society, thus considered; we come next to examine the Rules by which they are *directly* subjected to the Magistrate himself, considered as such; which are a Set of Duties essential to the very Existence of all Government, being, in strict Terms, the Correlatives to it.

THESE Laws take their Rise, indeed, respectively from the several Laws of *civil Dominion*, as delivered in the subsequent Book; and therefore, tho' they are plac'd here, that this Code of *criminal Laws* might be entire and full, yet, as their Reasons cannot be thoroughly understood, till the Laws, and Nature of *Magistracy* are known, the Student must suspend his Application to them, till he is, in some Degree at least, acquainted with *those Sources* whence they flow; where they are respectively hinted at, in their Places, as those of the precedent Parts are in the Book of *private Liberties and Rights*.

BUT the fuller Examination of each of them is referr'd hither, both as it is their proper Place, and as we thereby avoid wandering from the principal Business of the other two Books; which,

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which, in each of them respectively, is to deliver, *affirmatively*, what Men *may* or *ought* to do, either as *Subjects*, or *subordinate Magistrates*; who, in that respect, are *Subjects*; while the Consideration of the Laws, and Reasons, for punishing their doing what they *ought not*, are reserved to this Book: In the present Part of which we shall examine the direct Offences to *Magistracy* itself in the following

SECTIONS.

- I. OF *Subjection* to *Magistracy*, its Nature, Parts and Reasons; with the Offences there- to, in general, either by *Subjects*, or *subor- dinate Magistrates*.
- II. OF Offences to *judicial Magistracy*, or pub- lick Justice, either
 By *private* Persons, *Litigants*, or their Representatives. Where, of *Nullities* for want of due *Forms*.
 Of *rash Litigation*, *Forgery*, *Perjury*, *Bar- ratry*, *Concealment*, or *Composition*, of Crimes, &c.
 By *subordinate judicial Magistrates*, or their ministerial Officers, &c. where
 Of *Delay*, *Denial*, or *Sale* of Justice, &c.
 Of *Usurpation* of Power, or *Jurisdiction*, &c.
- III. OF Offences to *Fecial Magistracy*, and those either
 By *Subjects*; where
 Of various Breaches of the *Laws of Na- tions*, as *Subjects* stand obliged to ob- serve them by the municipal Laws of each State, and as each State stands, thereby, obliged to punish or surrender such Offender;
 By *subordinate Fecial Magistrates*; where
 Of Neglect of the appointed Forms of Proceeding, or Neglects of Duty, so far as express Civil Laws declare the Duty of such Officers; together with undue Extent, or *Usurpation* of Power by them, &c.
- IV. OF Offences to *Military Magistracy*, or the Laws of publick Force, either
 By *Subjects*, who are not *Military Persons*; where
 Of Breaches of the *publick Peace*, and of Opposition to the publick Force, of all kinds, &c. Or,
 By *Military Persons*; where
- Of Neglect of Duty, in *Military Per- sons*, of all kinds; of unwarrantable or usurped Exercise of Power by such, &c.
- V. OF Offences to the Laws of *Fiscal Magi- stracy*, or publick Property of all kinds; and those either
 By *Subjects*;
 In Misuse of publick Things; Neglect, or Refusal to pay publick Dues, or Taxes; undue taking, and converting publick Property to private Uses, &c.
 By *Fiscal Officers*; where
 Of Neglect of Duty, or undue Extent of Power, in the providing publick Things, or Property, &c.
 Of Misapplication, Imbezzlement or Pe- culation of publick Things, when pro- vided, &c.
- VI. OF Offences to the Rules of Legislative Magistracy, either
 By *Subjects*; where
 Of false, or partial Information given to Legislators, by Persons examined before them, in order to the making or alter- ing of Laws. Note, *That other Of- fences to Legislative Magistracy, being to Laws in general, include the Subject of the whole Book.*
 By *subordinate Legislatures*; where
 Of Neglect of Duty; Want of due Forms in Proceedings; or undue Ex- tent of Authority; in Magistrates vested with subordinate Legislative Powers of any kind.
- VII. OF Offences *common* to all the preceding kinds of subordinate Magistracy; which, In *Subjects*, are the Neglect of that mere personal Reverence and Regard that is due to them.

IN

IN *Magistrates* themselves, are the *actual* Exercise of the several Offices to which they may happen to be appointed, without such particular *Qualifications* as are required by Law.

VIII. OF Offences directly to *supreme Magistracy* itself, whether

More general; where

Of those general Branches of *Civil Allegiance*, which are neither direct Offences to any of the preceding Parts of Magistracy; nor direct Attacks on the Personal Rights and Dues of the supreme Magistrate: Such as entering into *foreign Service*; abetting or *aiding foreign Enemies*; betraying *domestic Councils* or Secrets, &c. where of

the *Crimina Læsæ Majestatis*, or *Treasons* of this kind.

More particular, where

Of Offences to the *personal Rights* and Dues of the supreme Magistracy, where-ever it is lodg'd: Such as *Plots* to divest supreme Magistrates of their *Offices*, or *Power*, by Violence; or direct Attempts against their *Lives*, which, in the Case of *Princes* especially, differ but very little: Together with Offences against Persons nearly related to them, as *Wives*, *Children*, *Servants*, &c. Where, of the *Crimina Læsæ Majestatis*, or *Treasons* of this kind.



B O O K IV.

E L E M E N T S

Of the L A W S of

P U B L I C K C I V I L D O M I N I O N,

O R

M A G I S T R A C Y,

USUALLY CALLED THE

L A W S of G O V E R N M E N T.

Sine Imperio, enim, nec domus ulla, nec civitas, nec gens, nec hominum universum genus, stare, nec rerum natura omnis, nec ipse mundus, potest. Cic. de Legibus, Dial. 3.

I N T R O D U C T I O N.

THE two preceding Books of this Work having stated, examin'd and prov'd, what are those *private Rights* in which Men should be maintain'd, on one hand, and what are the *publick Duties* to which they ought to be compelled, on the other; the Business of this Book is, to inquire into the *Means* by which, each of those may be, the most effectually, perform'd.

WITH respect to which it may be observ'd, in general, that, as the preceding Laws were Rules which the publick Understanding lays down, *ad extra*, for regulating the Actions of *Subjects*, consider'd as such; so all those of this Book are so many Canons, which it forms, *ad intra*, for its own Conduct, or that of its subordinate Officers; analogous, in some Degree, to those internal and reflexed Acts of the Mind, where it observes, judges of, and lays down Rules for exerting itself justly in, its several Operations.

AND we will therefore, accordingly, make our Inquiry into the Nature and Reasons of these Laws, in a manner something different from what is usual, by considering the several *simple Ends, Functions, or Acts* of Government, *separately*; so far as they may be so separately exercised; and then examine their *common Union* in, and Dependence on, the *publick Understanding*, or *supreme Magistracy* itself; which will, I apprehend, state and exhaust the whole
Idea

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Idea of Magistracy very distinctly ; and, at the same time, afford us an Opportunity, of reducing the Laws, or Rules thereto relating, into a more orderly System, than those in which they are frequently deliver'd : All which will be done in the several following

PARTS OF THIS BOOK.

- I. OF *Publick Civil Dominion*, its Nature, Objects and Parts, in *general*.
- II. OF the Laws of *Judicial Magistracy* ; being those Rules of Publick Dominion, which govern *internal Judicature*.
- III. OF the Laws of *Fecial Magistracy* ; being those Rules of Publick Dominion, which govern *external Judicature*.
- IV. OF the Laws of *Military Magistracy* ; being those Rules of Publick Dominion, which govern the *Common Force*.
- V. OF the Laws of *Fiscal Magistracy* ; being those Rules of Publick Dominion, which govern the *Publick Property*.
- VI. OF the Laws of *Legislative Magistracy* ; being those Rules of Publick Dominion, which direct the making all *Publick Rules of Action*, or *Laws* themselves.
- VII. OF the Laws of *subordinate Societies*, as they are a *compound* kind of subordinate civil Magistracy.
- VIII. OF the Laws of *supreme Magistracy* ; being those Rules of publick Dominion, which constitute the Being, and, in part, *direct* the Action, of that *publick Understanding*, which must exercise civil Dominion in the *highest Instance*.

PART I.

OF PUBLICK *Civil* DOMINION, its *Nature, Objects, Parts* and *Laws*, in GENERAL.

BEFORE we enter into the specifick Detail, of this extensive and most important Part of Civil Laws, it will be very proper to consider their Origin and Nature in general, a little more distinctly than was done in the First Book (a) ; which will be perform'd in the following

SECTIONS.

- I. OF the several Circumstances of human Nature and Existence, which give Rise to, and make *Publick Civil Dominion* or *Magistracy* necessary to Mankind.
- II. OF the *primary* Objects or Ends of Magistracy in general.
- III. OF the Necessity for examining and determining Controversies which arise *within* the Society ; whence *Judicial Magistracy*.
- IV. OF the Necessity for examining and judging concerning Wrongs from *without*, to the Society, or its Members ; whence *Fecial Magistracy*.
- V. OF the Necessity for a *Force* sufficient to execute the Result of those Judgments ; whence *Military Magistracy*.
- VI. OF the Necessity for *publick Things*, or Property, for the performing those and other publick Purposes ; whence *Fiscal Magistracy*.
- VII. OF the Necessity for *publick* standing Rules, as the common Measure and Guide of Actions, both private and publick ; whence *Legislative Magistracy*.
- VIII. OF the *secondary* Ends of Magistracy ; whence its *Delegations* and *Subordinations* : Where of the Distribution of the Territory

(a) Book I. Part XI.

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of a State into *separate Districts* and *minor Parts*, for the distinct Exercise of all the *subordinate Offices* of Government.

IX. OF the necessary *Union* of all these Powers, in some one, simple or compound, Understanding and Will; whence *Supreme Magistracy*.

X. OF the several *Characters* or *Ranks* of Men; which, as they are partly the Conse-

quences of *private Life*, so, they are partly the Foundations of *publick Dominion*: Where, of that celebrated Question, *Whether Dominion be, originally, in the Body of the People, as such?*

XI. OF the several *Qualifications* which fit Men for Magistracy, and the various Ways by which they may *acquire*, or be vested with it, in general.

PART II.

Of the LAWS of JUDICIAL Magistracy, being those Rules of *Publick Dominion*, which govern INTERNAL JUDICATURE.

FROM the preceding general View of the several *Ends*, or *Means* of *Publick Dominion*, 'tis evident, that we ought *first* to consider the Rules of *Judicial Magistracy*; which is that Part of them, that regulates the Method of examining the Agreement, or Disagreement, of all *particular Actions*, with the *general Rules*, to which they ought to conform, since 'tis from the Result of those Examinations, that the *Publick Force* must always take its Directions.

IN the earlier Ages of the World, and the Infancy of Civil Societies, before *distinct Laws* were form'd, either by Precedent or express Precept, 'tis apparent that this Magistrate was, in one and the same Instance, *Legislator* and *Judge*; having no other Rules but the Understanding of a prudent, and the Conscience of an honest Man: But those, in their most perfect Instances, produc'd so much Uncertainty and Confusion, as soon induc'd Mankind to resort to *express Laws* for their Guide, even in the Methods of *Judicial Proceedings* themselves, which, if left unregulated, would often produce Resolves little less erroneous, than the particular Actions concerning which they pretend to determine; and, in some Cases, be more hurtful, as they would add the Weight of *publick Force*, to *private Wrong*.

AND here I must observe, that tho' the *Redress* or Remedies for Injuries, of all Sorts, done to *private Persons*, lie in this Magistrate's Keeping, and are therefore a Part of *Publick Dominion*, yet, it is not unusual, to deliver the Doctrine of *Actions*, or Remedies for such Wrongs, in the Institutes, and as a Part, of *private Law*; which, tho' it may be convenient to lead the Students of *actual Laws* into the ready, and early, Practice of them, seems not so agreeable, to the Order of a *rational* and philosophical Inquiry into their Nature and Reasons, in general; which has induc'd me to reserve them to *this Place*, that the Rules of *Judicial Magistracy* might appear in one Body, unbroken and entire.

THO', in a Head of Law not only of such Extent in itself, but so varied by the different Institutions of *different Nations*, or of the same People, to *different Purposes*, the Reader, instead of a Detail of all its *minute Particulars*, must expect such a *summary View* of its most essential Parts, as is consistent with the Purpose of so general a Discourse as the present. Which will be given in the following

SECTIONS.

- I. OF judicial Magistracy, its Ends, Objects, Parts, Kinds and Laws in *general*. II. OF the *Persons* vested with judicial Power, whether single Persons, or compound Bodies,

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- and their ministerial Officers; the Method by which they may be called to their Office, with their Power, as it is *discretionary* and legislative, in the Cases of making Rules and Orders for judicial Proceedings, as well as *strictly* judicial.
- III. OF the Nature, and essential Parts of *solemn* judicial Proceedings, both in general, and as varied by the Objects of Litigation, whether in *Private* or *Publick* Pleas.
- IV. OF the Parts and Order of solemn judicial Proceedings, as peculiar to the *Roman* Laws.
- V. OF the Parts and Order of solemn judicial Proceedings, according to the Laws of *England*: Where of the *first Matter of Suits, Writs, Appearances, judicial Caution, Prisons, Pleas, Issues, Trials, Evidence, Judgments, Executions, &c. &c.*
- VI. OF *summary* judicial Proceedings; their Nature, necessary Parts, and Objects.
- VII. OF the various Limitations of this Magistrate's Office, *internally*, as to the Objects of Litigation: Where of Judges, or Courts restrain'd to *particular Kinds of Pleas*; their Nature and Reasons.
- VIII. OF the various Kinds of Limitations of this Magistrate's Office, *externally*, and *locally*, as to the District, or Territory, thro' which it extends; their Reason, and Laws.
- IX. OF Courts of *Equity*, their Nature and Use, in States where, for the Prevention of arbitrary Proceedings, the ordinary judicial Magistrates, or Judges, are tied down, in their Forms, either to the precise Rules of *customary*, or the strict Letter of *written*, Laws.
- X. OF *unlimited* and *supreme* Judicatories, as to the Nature of the Pleas, Extent of Territory, exact Form of Proceedings, or ultimate Resort, so far as such Powers may be delegated; their Use and Laws.

P A R T III.

Of the LAWS of FECIAL Magistracy; being those Rules of *Publick Dominion*, which govern EXTERNAL JUDICATURE.

THE Laws of *Internal Judicature* thus examin'd, we might proceed to the Consideration of *Military Magistracy*, or that publick Force by which such judicial Proceedings are to be executed; but (as that Force is not confin'd to Points of *domestick* Debate only, but extends itself, also, to the *external* Defence of the Society, or its Members) the Rules of Order make it necessary for us, to state the Idea of that Kind of Magistracy, which is to enquire into, and determine concerning, those *external* Transactions; the which (for want of a better Term) I call, in general, *Fecial Magistracy*; from that Order of Priests, or Heralds, who, among the *Romans*, had generally some Share in the Reception of Ambassadors, the making of Leagues, and declaring War.

'Tis true, their Charge, in *Rome*, extended to little more than the mere Reception of such Ministers, like our *Masters* of the *Ceremonies*, and to certain religious Sanctions, of Oaths, or Sacrifices, with which Leagues, when form'd, were usually accompanied: Whereas by the Term *Fecial Magistracy*, as us'd in this Work, I understand the *whole* Power of Peace or War; which, necessarily, includes that of receiving Ministers from, or sending them to other States.

THIS Magistracy, tho', from its Nature, it is essentially one, is, however, very various in its several Parts; 'tis merely *ministerial*, as, by Ministers received, or sent Abroad, it observes what is done, or doing, between its own State and others: 'tis *legislative*, as it forms Leagues, or Treaties, for their future Conduct; 'tis *judicial*, as it determines concerning the Agreement,

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Agreement, or Disagreement, of particular Transactions with the Rules to which they should conform; and, lastly, 'tis ministerial, judicial, and legislative all in *one*, where it exerts the publick Force in Acts of *Hostility*, in Affirmance of such Judgments.

FROM which multifarious Nature of this Magistracy 'tis obvious, that but a small Part of it can become the Object of *express* civil Laws; for first, tho' the civil Laws of every State must determine, with *what Magistrate* the Power of War and Peace shall be lodged; yet the exerting that Power, in actual Leagues of Peace, or Acts of War, are Points of *Prudence* only, which, depending intirely on the peculiar Circumstances of the Individual *hic* and *nunc*, are, therefore, incapable of *general Rules*: Again, tho' the Magistrate vested with this fecial Power may send, or receive Ministers; yet the Rights and Powers of such, when sent, or received, depend not on *municipal* Laws, but on the *Laws of Nations*; which are to be delivered in the subsequent Book.

So that the bare Point of lodging the Power of War and Peace with *some* supreme Magistrate, together with the Forms of delegating the *adjutory*, or *ministerial* Parts of it, are evidently all the Points of this Part of civil Dominion, that can become Objects of *express* municipal Laws, as such.

WHILE the Execution of its *prudential* Parts are, generally, of such a Nature, as not, safely, to admit of Debate in *popular Assemblies*: And, for that Reason, not only *Democracies*, but well constituted *Aristocracies* themselves, have generally lodged it with *some one*, or *some few* Persons at most; nor can the contrary be practised, without defeating divers of its most essential Purposes, which require *Secrecy*, and *sudden* Execution; but of that at large in another Place. Here the subordinate Parts of it will be considered in the following

SECTIONS.

- I. OF *fecial Magistracy*, and those Parts of it, which may become the Objects of *express* civil Laws, in general.
- II. OF the several *separate ministerial* Officers to whom any of the Parts, or Powers, of this Office may be delegated; and the appointed Forms of such Delegation; as they may become Objects of *express* civil Law.
- III. OF the Reception and Entertainment of *Foreign Ministers*; as it may become a Part of *express* civil Laws.
- IV. OF *Secretaries, Counsellors, or Councils of State*, as they may, by Usage, or *express* Laws, become necessary Assistants of *supreme* fecial Magistracy; but without direct *negative* Voices, for in such Cases they constitute a Part of it.

PART IV.

Of the LAWS of *MILITARY Magistracy*; being those Rules of *Publick Dominion*, which govern the PUBLICK FORCE.

AFTER the preceding Enquiry, into the Nature of *Domestick* and *Foreign* Judicature, the most immediate Object of our Examination is the Nature and Laws of that *Force*, by which their respective Determinations must be executed; which, though it be not always in *Action*, must always *exist*, and that in such a manner, as to lie as *near* as may be within the Reach, and at the *immediate* Command, of the several Magistrates who are impower'd to determine *judicially*, concerning its Use.

'Tis true, that most States have made a Difference between that which is *daily* and *hourly* in Use, for the Inforcement of ordinary *Domestick* Determinations, and that more considerable Power;

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Power, which becomes occasionally necessary, on *internal* Seditions, or *external* Injuries : Which, tho' it makes an obvious *Difference*, must not make such a *Distinction* as might, by leaving the State without a ready Defence, occasion the *Want* of it oftener than would otherwise happen.

HERE it must likewise be observed, That, tho' what is usually called the *civil Sword* is, from the Nature of its Use, among a well-disciplined People in the Times of profound Peace, capable of the precise Rules ; yet that more *effectual* one, which must be drawn on Occasions of more Moment, cannot receive the Direction of *express* Civil Laws, either in the Manner, or the particular Instances of that Use.

FOR which Reason, its Government is referred to the prudential Conduct of the *supreme Magistracy*, or that of those *military Societies* mentioned in another Part of this Book ; so that the *Manner*, and *Quantum*, in which it shall constantly exist, together with the Disposal of its Command in the *bighest Instance*, seem to be the principal Points in which it can become the Object of such Rules ; which will be examined in the subsequent

SECTIONS.

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| <p>I. OF <i>Military Magistracy</i>, its Nature, Objects, Kinds, and Laws, in general.</p> <p>II. OF that Kind of publick Force, which is less formally arm'd ; called, by us, the <i>civil Power</i>, or <i>Sword</i> ; its Nature and Laws.</p> <p>III. OF the <i>Feudal</i> military Force of the Northern Nations, and our own Tenures ; its Nature and Laws.</p> <p>IV. OF that Sort of publick Force, which, by our own Laws, succeeded to the Feudal Plan, called, by us simply, the <i>Militia</i>, or <i>Train'd-Bands</i> ; its Nature and Laws.</p> <p>V. OF <i>full</i> and constantly arm'd military Force ; called, by us, <i>standing Troops</i>, and by the <i>Romans</i>, <i>Militia Armata</i>.</p> <p>VI. OF those Institutions of publick Force, which, on the most extraordinary Occasions,</p> | <p>provide for, and appoint the Manner of, arming the <i>whole Body</i> of the People, that are able to bear Arms.</p> <p>VII. OF <i>Frontier</i>, and Garison Towns, Forts, and other Places of Defence : Their Nature and Laws.</p> <p>VIII. OF <i>Naval</i> military Force : Its Nature and Laws.</p> <p>IX. OF the various <i>Delegations</i> of Military Power ; so far as it may be delegated.</p> <p>X. OF the necessary <i>Union</i> of all these, or any of them, in some one <i>supreme Magistracy</i> ; in States where many, or all, of them subsist, to prevent the publick Force from falling into <i>Opposition</i> to, and defeating, itself.</p> |
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PART V.

Of the LAWS of FISCAL Magistracy ; being those *Rules* of *publick Dominion*, which govern the PUBLICK PROPERTY.

NOR are the preceding Provisions, for *judging* concerning Transactions at home, and abroad ; or for instituting a *publick Force*, to execute the Result of such Judgments, sufficient to answer all the Purposes of civil Society ; the private Members of which, as well as the publick Officers, stand in need of many things for their *common Use*, as *publick Ways*, and Passage, both by Land and Water ; the *Magistrates* and *Officers*, in particular, both those already mentioned, and those which follow, want a great Variety of things for *publick Use*, as well as for their own particular *Subsistence* : Such as *publick Buildings*, *publick Utensils*, and Instruments ; and consequently *publick Money*, or *Treasure* ; or the perpetual Supply of all those Purposes.

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I AM very sensible, that, in many States, the Care of providing some of these (such as publick *Ways*, and many publick *Buildings*, being made local and peculiar) is separated from the *Fiscus*, or publick Treasury; but notwithstanding such *peculiar* Appointments, as they depend upon the same Reasons with all the rest, and must, when not otherwise charged, be thereby also provided for, we cannot state the *whole* Idea of fiscal Magistracy, without giving them some Place in the Consideration; and where, whether the providing for them in *that manner*, or *otherwise*, is the most eligible? will be a Part of the Inquiry.

AND here it may be observed, in general, that, tho' the *Taxes*, (as they relate to so tender a Point as that of private Property) are in all well-governed States raised by expresse standing Laws; yet, are those Laws themselves so variable, so much the Object of Prudence, and the present Situation of Things, that what is a very just and fit Body of fiscal Laws, in one Nation or Society, may not be so, in another.

NAY, they depend so much upon the different Situations of human Life, and Employments, that those, which were the fittest, in one *Century*, may, in the same Society, be not only improper, but almost impracticable, in the next. Of Laws, therefore, which are, in themselves, so temporary, and occasional, the Reader must expect, but a general Account, and as general Reasonings concerning them; which will be done in the subsequent

SECTION S.

- I. OF the several Kinds of *publick Necessities*, and the different Manners of supplying them; in general.
- II. OF the Manner of charging the Execution of civil Offices, as so many *Burdens*, on the private Fortunes of the Officers themselves; the Cases in which 'tis practicable; with their Convenience and Inconvenience.
- III. OF the Manner of defraying the Expence, and Burden, of divers Offices, by *Fees*, from the Persons who resort to, or have Occasion for, their Assistance.
- IV. OF the Manner of supplying all the publick Expences of a State, by *publick Property*, without charging Offices as a Burden; its good Consequence and Use, in Preference to any other Method; except that of *Fees*, in some Cases.
- V. OF *publick Property*, in general; whether it be *permanent Funds*, whence Treasure is derived; or that *Treasure* itself, in kind.
- VI. OF *Portions of Land*, of which the State, or Prince, is possessed; either immediately, as so many Funds of Treasure for publick Use; or mediately, on stipulated Terms, for performing certain Offices. Where of the *feudal* Plan of Property, for *publick civil*, or *military*, Purposes.
- VII. OF casual *Fines*, *Forfeitures*, *Escheats*, &c. as so many Funds of publick Property.
- VIII. OF *Taxes* on *Mens Persons*, thrown into different Ranks, according to their supposed Dignity, or Expence, &c.
- IX. OF *Taxes* on the mere *Exercise* of particular Trades and Employments, with exclusive Rights for their Support.
- X. OF *Taxes* on *Mens inconsumable Property*, either really so, in Lands, &c. or supposed in Stocks of Money and Goods.
- XI. OF those *Inland Taxes*, on consumable Commodities, which are taken at their first Raising, or further Specification, &c. usually called *Excises*; with their Laws, Advantages, and Disadvantages.
- XII. OF those *Port Duties*, on consumable Commodities, which are taken at their Entry to, or Exit from, any State, usually called *Customs*; with their Laws, Advantages, and Disadvantages.
- XIII. OF the *highest fiscal Magistrate*, or Magistracy, so far as it may be delegated; and the Office where all these are *received*, or accounted for; and whence they are, again, *issued*, to their several necessary Purposes.

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PART VI.

Of the LAWS of LEGISLATIVE MAGISTRACY, being those Rules of *publick Dominion*, which direct the MAKING all *publick Rules* of Action, or LAWS themselves.

THE foregoing, more *restrain'd*, Parts of Civil Dominion thus examin'd; we come to the most *universal* of all the separate Acts of Governing, which is *Legislation*; a Power that, of all others, lies the nearest to supreme Magistracy itself: Most of the rest may be, and frequently are, delegated and exercis'd, in many States, almost in their utmost Extent: But where this Power, in its *highest* Instance, with the *prudential* part of *fecial Magistracy*, are plac'd, there, properly speaking, the *supreme Magistracy* itself resides.

THO', high and extensive as it is, it admits of various *Rules* for its Regulation, especially in the Instances in which it is delegated, some of them *common*, to all Acts of Legislation; and others *peculiar*, to the particular Objects about which it is conversant: 'Tis true, they cannot all be called *Laws*, in the proper Sense of the Word, because many of them exist not, in exprefs Terms, among civil Institutions; yet, as they will be put together in this Part, they will contain divers very useful Heads of civil Prudence; which could not find their Places, so properly, in any other Part of this Work.

AND this, the Author hopes, will be sufficient Excuse for its Novelty, as a *Head* or Branch of Laws; it being rather, the *universal Art* of making them; which Art, tho' it ought to be known, or understood, before Laws are *actually* made, is, however, among the last things to be consider'd, in their mere *Theory*; for, as its Rules take their Rise from a Prenotion of the Objects, about which it is conversant, they are found by means of that previous Consideration; nor would their Reasons be understood, tho' deliver'd, till the Mind has been so prepared.

WHICH is the Reason, that, not only here, but, through the whole Work, we have proceeded in an Order, almost, *reversed* to what is usual, in Institutes of Civil Prudence; which, frequently, from a very confus'd Idea of *supreme Power*, proceed, gradually, to the Detail of its minutest Objects: A Method very proper for delivering the *actual Fiats* of such Powers, but not so fit for an *Inquiry* into their Reasons. Which Inquiry, with respect to the Rules of Legislation, will be made in the following

SECTIONS.

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| <p>I. OF <i>Legislative</i> Magistracy; its Reasons, Objects, and Rules, in <i>general</i>.</p> <p>II. OF the <i>Objects</i> of Laws in particular, or the Points of private, or publick Life, which are, or are not, capable of standing general Rules.</p> <p>III. OF the <i>Qualifications</i> which fit Men for this important Charge, in <i>general</i>.</p> <p>IV. OF the manner of <i>proposing</i>, and <i>examining</i> the Fitness of, Laws in <i>general</i>.</p> <p>V. OF the manner of <i>expressing</i>, and <i>promulgating</i> them in <i>general</i>.</p> | <p>VI. OF the Rules <i>peculiar</i> to Legislation, on the Points of <i>private</i> Rights, and Property.</p> <p>VII. OF Rules <i>peculiar</i> to Legislation, on the Heads of <i>Criminal</i> Subjection.</p> <p>VIII. OF Rules <i>particular</i> to Legislation, in the Cases of <i>publick</i> Civil Dominion, or the Laws of <i>Magistracy</i>.</p> <p>IX. OF the <i>tacit</i> Admission, or <i>exprefs</i> Adoption, of foreign Laws, to particular Places, or certain Purposes, of Civil Society. Where of the exprefs and sufficient Promulgation of the tacit, or positive, Parts of the</p> |
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the Law of *Nations*, in each Society, as a Branch of Civil Laws; its Use and Advantage, for maintaining the mutual Peace of those Societies.

X. OF the *Abrogation*, *Alteration*, or *Expiration* of Laws, either expressly, or tacitly, by

Disuse: Where of their *Interpretation*.

XI. OF *subordinate* Legislatures; their Constitution, and properest Objects; so far as Legislation may, or ought to be delegated.

PART VII.

Of the LAWS of SUBORDINATE Societies, as they are a COMPOUND Kind of SUBORDINATE Civil Magistracy.

HAVING thus considered the Laws of the *principal* Means, or Instruments of Civil Dominion, so far as they may be *separately* and *subordinately* exercis'd; we might enter directly on the Consideration of *supreme* Magistracy itself, did not this Sort of *delegated* Societies lie in our way: But, they being, in Effect, a kind of *compound* subordinate Magistracies, which, in very extensive, or populous States, are of great, and even necessary Use, we could not rise, by just Degrees, to the full Idea of *supreme* Power, till we had examined their Nature and Laws.

WITHOUT which *subordinate* Governments, the *supreme* Magistracy could not, so well, attend to, or provide for, many of the *minute* Circumstances, to which such inferior Societies reach very effectually.

ESPECIALLY if that *exorbitant* Use of Power, which they are, from time to time, subject to fall into, be kept under a proper *Controul*; as is done, amongst ourselves, by the Court of *King's Bench*, with respect to our *Corporations*, &c. by the *King in Council*, with respect to our *Plantations*, &c. and by the *King in Parliament*, in respect to them all.

WITH regard to the *Constitution* of which Societies, and the Means of *checking* them, the *supreme* Power cannot well be too exact or cautious; since, without such Care, they may be, in divers Instances, not only so many Seeds of *Faction*; but Heads of *Sedition*, and turbulent *Revolutions*: For, by their legislative, judicial, and other Powers, they hold large Numbers in immediate *Union*; and, by their *frequent Assemblies*, give their particular Governors easy, and frequent, Occasions for acting to *such Purposes*: but of that, at large, in another Place. Their Reasons and Laws will be considered in these

SECTIONS.

I. OF *subordinate Societies*, as a Species of compound subordinate Civil Government: The Ends, or Objects of their Power; with their Constitution, and Laws, in general. Where of *Bye Laws*, in general.

II. OF Societies for the Government of particular *mechanick*, or *mercantile* Trades; that have, within themselves, some Sorts of Legislative, Judicial, and Fiscal Magistracy, for those Purposes: Such as were the Col-

leges of *Artizans*, among the *Romans*; and are our own *Guilds* and *Companies*.

III. OF Societies for the Purposes of *Learning* and *Knowledge* in general, or particular, having divers such-like Powers, within themselves; of which kind are our *Colleges* and *Universities*: their Use, Nature, and Laws.

IV. OF Societies for *Military Ends*, whether by Land, or Sea; of which Sort are an Army, or a Fleet, govern'd by its General,

or

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or Admiral, at the Head of their Council of Officers; for regulating many Parts of Military *Discipline*, &c. in general; and all military *Operations*, in particular: which are too variable, and occasional, to fall under the *express* general Rules of Civil Society. Where of *Martial Law*; and *Courts Martial*, &c.

V. OF Societies for the limited *local* Government of particular Towns, having some such-like Powers within themselves: such as the *Roman Municipia*, and our own *Corporations*: with their Uses, Laws, and Limits.

VI. OF Societies for *Religious* Purposes, having certain Legislative, Judicial, and other,

Powers, within themselves, with respect to the *Theory* and *Practice* of Religion: Their Constitution, Use, Bounds, and Laws, in general.

VII. OF subordinate Civil Societies, with the entire Exercise of *all Parts* of Civil Government; (except, perhaps, the *Fecial* Powers of War and Peace) but in various Sorts, and Degrees, of Subjection, to the supreme, or subordinate, Magistracies of the *dominant State*, or Society: Such as were divers of the *Roman Colonies*, and *Provinces*, and such are our own *Plantations*, *Ireland*, &c.

P A R T VIII.

Of the LAWS of SUPREME *Magistracy*; being those *Rules* which *constitute*, or *regulate*, that PUBLICK UNDERSTANDING, which must *exercise* ALL Parts of *publick Dominion*, in the HIGHEST *Instance*.

THE several distinct Objects, Ends, or Acts, of Magistracy, with their arising Laws, thus, *separately*, considered; we come to the *bighest* and most arduous of all Civil Inquiries, which is that concerning *Supreme Magistracy* itself; being that Body of Rules, by which the Person or Persons, in whom all the preceding Powers must be united, are called to the Office, and vested with the Rights, either of *exercising* those Powers, in the highest Instance, where they are not delegated; or of *delegating* them, where such Delegations are fit, and necessary,

BUT (as the *Importance* of this Charge has, not only, divided the *coolest Heads*, but agitated the *warmest Spirits*, of every Age and Nation, more than all the other Parts of Law and Government) 'twill be sufficient to state the several most remarkable *Forms* of supreme Magistracy; with their respective Reasons, Advantages, and Disadvantages, in *general* Terms only: Leaving the rest to be determined by those supreme Powers themselves, as in *Fact* they exist.

WHICH Powers are, perhaps, the only *Umpires* that can decide Debates, wherein Mens *Passions* (both when *in* Power, and when *out* of it) have too great an Influence on their Understandings, to let pure *Reason* have its full Weight, on either Side of the numerous Questions that arise on this Head of Laws: Where, also, we must not forget to observe, that *many* of these Questions are among those Points of Law, which vary according to the Circumstances of the People to whom they relate; and are, therefore, determinable in *probable* and *relative* Terms only.

AND, here, 'tis to be, again, remember'd, that, though the Institution of *some* Supreme Power, is always the *first* Thing to be done, in the *actual* Establishment of any one Civil Society

Book IV. ELEMENTS OF THE LAWS OF MAGISTRACY. 49

Society ; yet, the Rules of its Establishment, are, in *Theory*, the *last* Point of Consideration : For, 'till we have distinctly examined all the preceding Objects of Law, we can neither determine, what Powers the Supreme Magistracy ought to be vested with, in *general* ; nor judge, *comparatively*, of the different Advantages, or Disadvantages, arising from any proposed Form, in *particular* ; because that Difference arises, from their being more or less fitted to answer those Purposes : As the Reader will perceive by the Manner in which they will be considered and compared.

WHICH Consideration and Comparison is not a little necessary, because from this Power, where-ever 'tis lodg'd, there can lie *no Appeal*, by express Law ; for, to whomsoever such Appeal should lie, *there* the Supreme Magistracy would reside ; and so on, to an absurd and impracticable *Infinity* : Which, however, has been attempted, by some refining Heads, 'till, in their Schemes, Government, like an unwieldy Machine, is *overloaden*, and *useless*, by the Multiplicity of its own Motions ; but of that transiently in this Place. These Laws of Supreme Magistracy will be considered in the following

SECTIONS.

- I. OF Supreme Magistracy ; its Necessity ; essential Rights, and Powers ; and various Forms, in general.
- II. OF Supreme Magistracy, lodg'd in the Body of the People, which is called, *Democracy* ; whether *strictly* such, where the *whole* Body concurs in all great Acts of State, such as making Laws, internally ; Peace or War, externally ; and conferring Offices for either Purpose ; or *improperly* so, where that Body exerts itself by Colleges of *elected Representatives* : With their necessary Rights, Conveniencies, and Inconveniencies.
- III. OF Supreme Magistracy lodged in a Body of *Hereditary Nobility*, which is called an *Aristocracy* ; its necessary Rights ; Conveniencies ; and Inconveniencies.
- IV. OF Supreme Magistracy lodg'd in *One Person*, whether absolute, or with Controul ; Elective, or Hereditary ; usually called *Monarchy* ; its necessary Rights, Advantages, and Disadvantages.
- V. OF divers of the most remarkable *Mixtures*, *Compositions*, and *Decompositions*, of those three simpler Forms ; with their Laws ; Advantages ; and Disadvantages : In a very concise manner.
- VI. OF that particular Mixture of them all, which formerly was, and which now seems to be, the Constitution of the *English* Government : Its various Perfections, and Advantages : Together with a very short Sketch of the *Legislative* and *Executive* Powers ; as thereon, separately, dependent, &c.

A GENERAL REMARK, concerning the *Use* and *Nature* of these *Elements*.

And here, the Reader, if he recollects, will perceive that he has been led, from the simplest Objects of Private Law, through a Series of intermediate Deductions, up to this most compound Idea of Supreme Civil Power, as it stands upon its general Reasons.

This is, therefore, the Point from which the Student ought to set out, in the direct Study of the actual Laws of any Particular Society ; by stating the Constitution and Laws of its Supreme Power, and descending thence, through all the Parts of its Subordinate Magistracy, its Criminal Laws, and its Laws of Private Rights and Property, in an Order, almost revers'd to that which has been here observ'd, where, I may venture to say, he will find the great Out-lines of all Laws, whatever, which he may fill up with those Particular to any one State, as they stand, partly, on their general Reasons, and, partly, on Maxims peculiar to themselves.

And, from the same Point, if he looks forward, into the General Doctrine of the Law of Nations, as there delivered, he will find the like Out-Lines of that Particular Society's Situation,

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with respect to all the States about it, which may, in like manner, be filled up, with all that is singular to it, in those respects, at any particular Time, &c.

With an Example of which, in a very short Sketch of the Laws of England, as the most general Plan of a little Institute thereof, this Book will be closed; according to what is proposed in Section the VIth, foregoing.

N. B. *This Remark is placed here, both as it serves to explain the Author's Idea, of the Use of such a general Discourse as the present; and as it may help the Reader to account for what might, otherwise, seem peculiar; either in the Order, in which the Subjects of it are disposed; or, in the Terms, in which they are expressed.*

For, as all particular Bodies of Law have, both an Order, and a Language peculiar to themselves, a Discourse concerning Subjects common to all, or most, of them, could not, properly, agree, in those respects, with any one of them, in particular.



BOOK V.

E L E M E N T S

Of the LAWS of

NATIONAL SOCIETY.

A N D

I N T E R C O U R S E,

USUALLY CALLED

The LAW OF NATIONS.

— *Inter quos, autem, ratio, inter eosdem recta ratio communis est: quæ cum sit Lex, Lege quoque consociati homines cum Diis putandi sumus.*

— *Parent, autem, huic cælesti descriptioni, mentiq; divinæ, & præpotenti Deo [rationi]: unde, etiam, universus hic mundus, una Civitas, communis, Deorum atq; hominum existimanda sit.*

CICERO, de Legib. Dial. I.

I N T R O D U C T I O N.

IN the three preceding Books, we have particularly examin'd the Rise, and Reasons, of those Rules, by which the *private social Life* of one Body of Mankind is, *internally*, maintained, in one Society, by one common Force, under the Direction of one common Understanding.

AND it appears, from what has been said, both in the First Book, and in the latter Part of the preceding, that the whole Species cannot be included in any one such Society: Because no one publick Understanding could perceive what was fit to be done; nor no one common Force execute it, though perceived, beyond certain Limits; which Limits, though

though they have no *precise* Bounds, do, yet, fall vastly short of the Extent of the *whole Earth*.

THIS Truth, every body perceives, when 'tis expressed in other Terms; for, when we talk of *universal* Monarchy, or *universal* Empire, People, the least acquainted with Civil Government, perceive the Inconvenience of being made a *Province*; that is, of having their Laws made by *Persons* too remote, and too little acquainted with their Circumstances to make them good; and to have them also, bad as they would be, yet more lamely *executed*, in some Instances; or strained to *tyrannical* Purposes, in others; and that without the Possibility of any timely or sufficient Redress, because of their Distance from the common Centre of Understanding and Power.

THIS was what, in the earlier Ages of the World, rendered those vast Governments, called *The Four Great Monarchies*, so odious to Mankind; and successively pulled them down: 'Tis these Circumstances, also, which have made the Idea of an *Universal Monarch*, though within the Limits of *Europe* itself, frightful to all her wiser States; and has, justly, given Birth to that Sort of national Policy, which is, now, so well known, under the Style of maintaining the *Balance of Power*.

NOR is the *opposite Extreme*, of confining themselves to too *small* a Compass, less inconvenient; since, how well soever such Restraint may enable the Supreme Magistracy to govern, at *Home*, it renders those Societies incapable of Defence *Abroad*; and so exposes them, perpetually, to the Danger of becoming Provinces to greater States; or to suffering more from them, than if they were so.

WHICH, notwithstanding their boasted Plans of Liberty, was the Case of the little Commonwealths of *Greece*; and of our own Country, formerly, under its *Heptarchs*: And is still the Case of the *Helvetick Body*, and some of the petty States of *Italy*: The first being rather safe in the *Barrenness*, than the *Strength*, of their Mountains; and the latter, whose fertile Fields pay better for their Conquest, are perpetually subject to the Attempts of their *stronger* Neighbours; while their *mutual Jealousies* of each other, make them incapable of *mutual Defence*.

MANKIND being, therefore, thus necessarily divided into *many* such separate Societies, under these Laws of their Nature, in general; but retaining still the Power of mutually helping, or hurting each other; we come, in the *present Book*, to inquire into the Nature, and Reasons of those *Rules*, by which their *social Life* is extended from Multitude to Multitude; till, by that means, it reaches over all the *habitable Earth*; and holds the *whole Species* to their mutual Duties.

THIS Body of Laws the *Romans* called *Jus Feciale*, from an Order of Priests or Heralds, who, as has been already observed, were therein employed; and is, by some Moderns, called *The Law of Nations*; by others, *The Laws of War and Peace*: Though it seems most properly styl'd, *Jus inter Gentes*, and which I, therefore, call *The Laws of National Society and Intercourse*: having reserved their Consideration for the Last Part of this Work, because they are not only, in part, deriv'd from the Laws of Civil Society itself, but are also of a superior and much more extensive Nature: Which Laws we shall examine in the several subsequent

PARTS OF THIS BOOK.

- I. OF *National Intercourse*, or Society, and the *Law of Nations*, in general.
- II. OF the Laws of Society between Nations, in a State of *Neutrality*, that is, antecedent to express Peace, or direct War, between them.
- III. OF the Laws or Rules of *Acts preparatory* to express peaceful Society between Nations.
- IV. OF the Laws of *private National Society*, by *express Treaty*; being the Rules of private Intercourse between their Subjects.

V. OF

V. OF the Laws of *publick* national Society, by express Treaty; being the Rules of mutual Action between those Bodies themselves.

VI. OF the Laws of certain *secondary Compacts*, for maintaining Peace, and determining Controversies, between Nations, without War.

VII. OF *War* between Nations, as the *last Remedy* for Wrongs; and its *Laws*, in general.

VIII. OF the Laws of the *least solemn* Sort of War; usually called *Reprisals*.

IX. OF the Laws of *solemn War*, but in its *tempered* State.

X. OF the Laws of *solemn War*, in its most *unlimited* and rigorous State.

XI. OF the Laws or Rules of those *accessary Compacts*, which usually *accompany, suspend, or close* the State of War.

PART I.

OF NATIONAL *Intercourse*, or *Society*, and the LAW of NATIONS, in *general*.

IN Conformity to the Method hitherto followed, before we enter on a particular Examination of this momentous Body of Laws, we will consider their *Origin, Objects, and Nature*, in general, in the following

SECTIONS.

I. OF the several Circumstances of human Existence; which make it necessary for Mankind, to resolve themselves into many *different* civil Societies, and the Facts by which they are so constituted internally.

II. OF the external *Bounds* of such States or Nations; whether *natural*, as Seas, Rivers, Mountains, &c. or *artificial*, as Trenches, Walls, or Boundaries otherwise marked out, together with their adjacent Parts; in some Cases called *Marches*.

III. OF the *Rights* and *Obligations* necessarily

resulting from such Separations, and *Wrongs* thereto, in general.

IV. OF the several *Remedies* for such Wrongs; whether by immediate *Treaty* between the contending Parties; the Interposition of national *Umpirage*, and *Judicature*, or direct *hostile* Acts, defensive or offensive, and *Mens Right* thereto in general.

V. OF the *Duration, Interpretation, or Changeableness* of these Obligations; and of the Rules and Laws thereto relating, whether tacit, or express.

PART II.

OF the LAWS of *Society* between NATIONS, in a State of NEUTRALITY; that is, ANTECEDENT to *express Peace*, or *direct War*, between them.

FROM the preceding *general* View of these Laws, it is obvious, that the *first* Object of our, more distinct, Inquiry is, concerning that *Intercourse*, which generally has, and must happen, between Nations, while they are in a State of *Neutrality*; antecedent to express Peace, or direct Hostilities: which will therefore be considered in the following

SECTIONS.

S E C T I O N S.

- I. OF the State of *Neutrality* between Nations, as it arises, *internally*, from their separate Government; and, *externally*, from their natural Boundaries, different Languages, and remote Situations; its Rights, and Laws, in *general*.
- II. OF *private Persons*, either single, or in small Numbers, entering the Dominions of other States, for mere *Curiosity*, or *Passage*; with its Consequences.
- III. OF *private Persons* entering, in like manner, for *Traffick* or *Commerce*, and its Consequences.
- IV. OF *private Persons* driven by various Accidents into the Territories of other States; such as *straying*, by Land; and *Stress of Weather*, or *Shipwreck*, by Sea; and its Consequences.
- V. OF *publick Persons*, such as Messengers, Herald, Embassadors, &c. sent without Permission, for various Purposes, and their Rights. Where, of *Spies*.
- VI. OF *Princes* in Person entering, or driven by Accident, either sole, with small Retinues, or Multitudes, arm'd or unarm'd, into the Dominions of other States: and their Consequences.
- VII. OF the *Rights* of Nations to prohibit such Entries, in general, or to repel, or punish them, in various Ways; without any distinct antecedent Prohibition.

P A R T III.

Of the LAWS or Rules of *Acts* PREPARATORY to EXPRESS *peaceful Society* between NATIONS.

By what has been said in the preceding Part, it seems evident, that many of the *Rights* laid down by the *Roman Lawyers*, with respect to the *Freedom of Seas, Shores, Ports, Passages*, and *Commerce*, were, in reality, but Claims, made by the *stronger*, on the *weaker*, as Occasions for Quarrel and Conquest; being, in many Instances, so contrary to the Nature and Safety of *Civil Society*, that they are, justly, *disputable* at least, and therefore *dangerous* to those who practise them: which has introduc'd the Use of *express Contracts*, for those Purposes; to which *ultimate* Regulations, however, certain intermediate and *preparatory Acts* become necessary; the Rules and Laws of which we are now about to consider in the following

S E C T I O N S.

- I. OF the Necessity, and Nature of Acts *preparatory* to peaceful National Society, by *express Treaty*, in general.
- II. OF *Heralds, Envoys* and *Embassadors*; their Reception, Rights, and Privileges, when admitted, in general.
- III. OF Persons not only impowered to treat of, but to conclude, such Contracts; as *Commissaries, Plenipotentiaries, &c.* their Rights and Powers. Where, of *Preliminaries*.
- IV. OF *Congresses*, or mutual Meetings, for such Purposes; whether by *Princes* in Person, or their authorized *Ministers*; with their Forms and Laws.
- V. OF *Contracts* between Nations, as the Result of such Negotiations; their Kinds, Forms, Force, and Interpretation in general.

P A R T

P A R T IV.

Of the LAWS of PRIVATE *National Society*, by EXPRESS TREATY;
being the Rules of *Private Intercourse* between their SUBJECTS.

AMONG the *National* Compacts, which we have above consider'd in general, we will first examine those in particular, which relate to and regulate the *private* social Life of the Individuals of different States; as they are those for whose sake the more *publick* ones are, principally, form'd; which will be done in the following

S E C T I O N S.

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| <p>I. OF Agreements or Treaties of <i>Peace</i> or <i>Amity</i>, in general Terms only; their Force and Effect, without separate, and distinct Stipulations, of any Kind.</p> <p>II. OF Contracts for <i>private Commerce</i>; either at large, or to particular and limited Kinds, and Degrees. Where, of <i>Tariffs</i>, <i>Customs</i>, <i>Contraband</i>, &c.</p> | <p>III. OF <i>private</i> Contracts between the <i>Subjects</i> of one State, and the <i>Princes</i> or Governors of another, for such-like Purposes.</p> <p>IV. OF the Laws of <i>Merchants</i>; as they subsist, on <i>general</i> Custom, under the Regulation of such Treaties. Where, of <i>Factories</i>, <i>Consuls</i>, &c.</p> |
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P A R T V.

Of the LAWS of PUBLICK *National Society*, by EXPRESS TREATY; being the Rules of *mutual Action* between those BODIES themselves.

BESIDES which *private* Intercourse, the *publick* social Acts of whole Societies are most necessarily the Objects of such Agreements, and are indeed the most considerable Part of, what we may call, the *written* Law of Nations: Because, like Contracts between private Persons, or the Statute Laws of Civil Society, they give Birth to a great Variety of more important Duties and Obligations, than arise either from the *Nature* of Things, or old *Usage*: both which are bounded, diversify'd, or enlarg'd, by them, in various ways: All which will be consider'd in the following

S E C T I O N S.

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| <p>I. OF National Contracts for <i>publick</i> social Acts; their Kinds, Force, Interpretation, and Duration, in general.</p> <p>II. OF Treaties for stipulated mutual Assistance, <i>defensive</i>, or <i>offensive</i>; to a <i>limited</i> Degree, or with their <i>whole</i> Force; their Kinds, Force and Laws.</p> <p>III. OF Treaties of <i>Subsidy</i>, on various Conditions; with their Nature and Laws.</p> | <p>IV. OF Contracts of <i>Loan</i>; with their Nature and Laws. Where, of <i>national Pledges</i>.</p> <p>V. OF National Contracts, for the Transfer of <i>Property</i>, or <i>Dominion</i>;—analogous to Conveyances between private Men; their Nature and Laws.</p> <p>VI. OF National Contracts for <i>permanent Union</i> in some of, or all, the Parts of <i>Civil Government</i>; their Nature and Laws.</p> |
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P A R T

P A R T VI.

Of the LAWS of *certain* SECONDARY COMPACTS for *maintaining* PEACE, and *determining* CONTROVERSIES, between NATIONS, without *War*.

B E I N G

The *Rules* of NATIONAL JUDICATURE.

NOR are all the *tacit* Rules of natural Reason, or the *express* Stipulations, which we have hitherto considered, sufficient to hold different Nations, to their mutual Duties: For, as, in *Civil Society*, Laws are an uncertain or a dead Letter, without the Interposition of the *judicial Magistrate*, much more do they become so, in the Case of whole *Nations*; which renders a Resort to some indifferent *Interpreter*, or *Judge*, frequently, necessary between them.

BUT here, 'tis also evident, that the mere *Capacity* of discerning what is Right, and the *Will* to determine accordingly, are not the only Requisites to the Judges, in such Cases: For, as the *Strength* of Nations, too frequently, emboldens them to do Wrong, so, the Sentences of *weak Judges* would have but little Weight; which, in the Case of National Disputes, has introduc'd various kinds of *References*, *Appeals*, &c. to *whole Nations*, or their *prime Magistrates*, in order to adjust them, without the last Resort to *Force*. The several Kinds and Rules of which will be considered in the following

S E C T I O N S.

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| <p>I. OF <i>National Judicature</i>, or Judgment between Nations; its Natures, Kinds, and Laws, in general.</p> <p>II. OF <i>Mediation</i> between Nations, and the Right of <i>indifferent</i> States to interpose, in such Disputes, voluntarily or unsought; with its Reasons and Laws.</p> <p>III. OF <i>Umpirage</i> between Nations, by express</p> | <p>Contract on both Sides; its Nature and Laws.</p> <p>IV. OF sole, or mutual Stipulations, for the <i>guarantying</i>, or <i>Guardianship</i> of particular Treaties, or Peace, in general; their Nature and Laws.</p> <p>V. OF the extensive Scheme of <i>Henry the IVth</i> of <i>France</i>, for erecting a <i>National Judicatory</i>, or Tribunal, for all <i>Europe</i>.</p> |
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P A R T VII.

Of WAR between NATIONS, as the *last Remedy* for *Wrongs*; and its LAWS, in *general*.

BUT notwithstanding all this Thread of Cautions, for settling the Rights of different Societies, or holding them to their mutual Duties; the Folly, Pride, or Ambition of particular *Rulers*, or the Madness of *Multitudes*, sometimes *desperate* with Want, and sometimes *drunk* with Luxury, makes the *last Resort*, to publick National Force, too frequently necessary; for the *repelling*, of present; the *Redress*, of past; or the *Prevention*, of future Injuries: Which will be considered, in *general*, in these

S E C-

SECTIONS.

- I. Of the *Necessity* and *Legality* of War, according to the several Circumstances that justify it. Where, of that difficult Question, concerning the *Prevention* of the too great Growth of National Power, by *Force*.
- II. Of the *Persons*, or *States*, that may use this Means of Redress; it being the different Degrees of Sovereignty, or Subjection, that give, or take away, the Right to it. Which Question is to be understood of *offensive* War only: For, to the immediate repelling of *instant* foreign Force, the privatest Persons have an *absolute* Right; tho' not to the Pursuit of it, by way of Redress, when once repell'd.
- III. Of the *Means* of War, or the various sorts of Hostility, hostile Acts, and Instruments lawful. Where, of *Stratagems* and *Deceit*, not contrary to particular Compact. Here, however, we are not writing *Tactics*, or the *Art of War*, but the *moral* Rules of using that Art.
- IV. Of the *Effects* or *Consequences* of Victory, or being vanquish'd, on the remaining Persons and Things: As to the Change of Property, Acquisition of Sovereignty, or Power of Life and Death, &c. Where, concerning the Exaction of *Damages*.
- V. Of Acts which put an *End* to War, by Treaty, or Surrender, &c. in general.

PART VIII.

Of the LAWS of the *least solemn* kind of WAR, called REPRISALS.

AFTER this general View of a Species of *Coertion*, which is so inconvenient to, and brings so much Misery, even on those, who, themselves, inflict it; the Wise and Good will always think, that the *simplest* and most humane Method of Redress, ought *first* to be attempted; and therefore *first* considered, in particular; which will be done in the following

SECTIONS.

- I. Of the *Nature* of Reprisals, their Kinds, and Laws, in general.
- II. Of the several *Offences* or *Wrongs*, which give Right to Reprisals, and for which they may be adequate Remedies.
- III. Of the several Kinds and Manners of making Reprisals; Whether on the *guilty Persons*, where they can be found, only? or on the *Guilty* and *Innocent* indifferently?
- IV. Of the *Effect* of such Reprisals, in transferring of Property, giving Power of Life and Death, &c.

PART IX.

Of the LAWS of SOLEMN WAR, but in its TEMPER'D State.

BUT those gentler Methods *failing*, or being, from the Nature of the Offence, *impracticable* with Success; the Injur'd are, sometimes, compell'd to let National Resentment loose, in the *solemnest* manner, on a whole People: In which Situation of Things, however, Humanity, and the just Policy, of not making Offenders desperate, have induc'd the more civiliz'd Nations, to hold even this Harpye, herself, within *some Bounds*; which we now come to consider, in the subsequent

SECTIONS.

- I. OF *solemn War* in its *temper'd State*, in general.
- II. OF the Rules which such Temperature gives, to *hostile Acts* and *Instruments*.
- III. OF the Distinction it makes, between the *Arm'd* and *Unarm'd*.
- IV. OF the Restraint it lays, as to the *Acquisition of private Property*; where, of *Forage*, *Quartering at Discretion*, and *Contributions* for Subsistence.
- V. OF the Moderation it prescribes, as to the Acquisition of *publick Dominion*, or *Empire*, and Power of *Life and Death*, &c. Where, of *Prisoners of War*.
- VI. OF the Rules it enjoins, as to *Reparation of Damages*, and *Repayment of Expences*.
- VII. OF the Regard such a *temper'd State of War* pays to *neuter Nations*, in the various ways in which War may affect them.

PART X.

Of the LAWS of *solemn War*, in its *most UNLIMITED State*.

BUT, tho' Reason, and the Nature of Things, prescribe these *Limits* to Devastation, and Destruction, themselves; yet, the Non-observance of such just Rules hath, sometimes, added *Desperation* to *Rage*; and brought on, that last and utmost of human Miseries, *War* in its most *unlimited* Circumstances; which is doing *all the Mischief* that is absolutely in the Power of the contending Parties, either *during* the Contention, or when *one* of them remains Victor: And where, therefore, instead of *Rules*, the Reader must rather expect a *History of Facts*; and a *doubtful* Inquiry into their Reasonableness, and Legality, in the following

SECTIONS.

- I. OF these *extremest Acts of Hostility*, and whether any, and what Circumstances, can make them consistent with Humanity? in general: Where, of *Reprisals in War*, for irregular Acts of Hostility.
- II. OF the Use of all imaginable Modes and Circumstances of Annoyance, such as *Poisoning of Weapons* and *Waters*, &c.
- III. OF *Pillaging* and *Devastations*, not for Subsistence, but Punishment, or Prevention, &c.
- VI. OF putting *Multitudes* to the *Sword*, *sacking* and *burning of Towns*, &c. on their being taken by Storm, after what is called unreasonable Resistance. Where, of *Summons*, and *six Days for Surrenders*.
- V. OF holding Prisoners in direct and *perpetual Slavery*.
- VI. OF the intire Subversion of *private Property*, in things moveable and immoveable.
- VII. OF assuming Empire on *unequal Terms* of Subjection; or, leading the Body of a People *captive*.
- VIII. OF the Deletion of *whole Nations*, or *large Parts* of them, and Re-peopling.

PART XI.

Of the LAWS, or *Rules*, of those *ACCESSORY COMPACTS*, which *accompany, suspend, or close*, the State of *WAR*.

BUT during the Progress of these Scenes of Horror, Necessity makes Men tame enough, to look for the Means of *moderating*, or *closing* them; which has introduced, and made the

the following *Compacts* constant Companions, or Followers, of Military Fury : Of which we shall treat in these

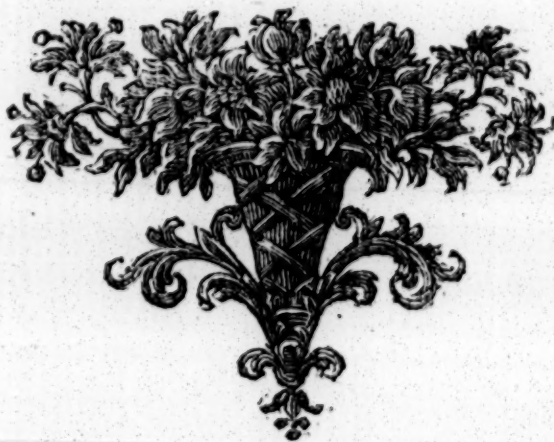
SECTIONS.

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| <p>I. OF <i>Parlies</i>, for various Purposes ; and their Rules.</p> <p>II. OF <i>Passes</i> and <i>Safeguards</i>, their Kinds and Rules.</p> <p>III. OF <i>Cessations</i> of Arms, and <i>Truces</i>, for various Purposes, their Nature and Rules.</p> <p>IV. OF Treaties, for <i>Exchange</i> of Prisoners, <i>Burying</i> of Dead, &c. with their Rules.</p> <p>V. OF <i>Surrenders</i>, on Terms, or at Discretion, either immediate, or future ; as the</p> | <p>Non-arrival of Relief at a Day certain, &c. their Kinds and Laws.</p> <p>VI. OF Treaties of <i>Peace</i>, or <i>Submission</i> ; either absolute, or conditional ; as, the Event of a <i>future</i> Battle, or a <i>single</i> Combat, &c. their Nature and Force.</p> <p>VII. OF <i>Hostages</i>, or <i>cautionary</i> Places, for the Performance of Articles, on one, or both Sides, &c. their Kinds and Rights.</p> |
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The CONCLUSION of the WHOLE Work.

BEING, a *Review* of all the *preceding* Thread of *Discipline*, as tending to its particular and general Purposes ; in farther Confirmation of the *Deductions* of the first Book, and a more distinct Solution of many considerable Points of *Doubt*, than was there offered.

To which will be added, for the Use of such Gentlemen as may like them, a Set of ANALYTICAL TABLES ; that shew expressly, to the Eye itself, the *Order*, *Connection*, and *Dependence*, of the whole Discourse, in all its greater and lesser Parts.



the following cases contain Company or Division of Assets Data. Of which we shall mail in this

